

**2006 Regular Session  
Senate Majority Office**



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## FOREWORD

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This publication, prepared by the Senate Majority Office, answers frequently asked questions about selected major bills and resolutions passed by the Twenty-Third Legislature of the State of Hawaii during the recently completed Regular Session of 2006.

This edition of 2006 Legislative Action Briefs supplements the 2006 Legislative Accomplishments that was recently published by this office. Users are referred to the actual measures and accompanying committee reports for details. Where applicable, Act numbers as of May 17, 2006, have been inserted.

Both the 2006 Legislative Action Briefs and the 2006 Legislative Accomplishments can be found on the Senate Majority Caucus Website at <http://www.capitol.hawaii.gov/senmaj/accomp/index.htm>.

Senate Majority Office  
May 2006



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## LEGISLATIVE ACTION BRIEF

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### AFFORDABLE HOUSING

- Q. *Rising home sales and rental prices and a lack of housing inventory continue to make it extremely difficult for Hawaii's residents to secure affordable housing, notwithstanding enactment of Act 196, the omnibus housing measure of the 2005 Session. What actions did the Legislature take in the 2006 Session to further address housing and homeless problems?***
- A.** The Legislature passed a number of measures to address specific recommendations made by the Joint Legislative Housing and Homeless Task Force established by Act 196. These actions respond to the following areas of concern of the Task Force: (1) preserving and maintaining the existing stock of public housing and rental units, much of which is badly deteriorated, subject to high vacancy rates and long turnover times, and otherwise not available for needy tenants; (2) making available more public land for the development of affordable housing; (3) streamlining government approvals and permitting of affordable housing projects; (4) appropriating additional funds for transitional housing, shelters, and services for the homeless population; and (5) leveraging more sources of financing for affordable housing.
- Q. *What did the Legislature do to make vacant public housing units available more quickly, and increase the supply of land for affordable housing?***
- A.** **SB2958, SD2, HD1, CD1** will: (1) require dilapidated public housing units to be decommissioned for ownership and management by private entities; (2) require the transfer of land suitable for affordable housing to the Hawaii Housing Finance and Development Administration; and (3) authorize the Administration to lease suitable small state parcels at one dollar per year for self-help housing development. Renovating public housing is an important step in tackling the homeless problem, and this measure will allow the private sector to contribute to greater progress in reducing high vacancy rates and long turnover times that currently make many public housing units unavailable to needy tenants. The transfer and leasing of state parcels for self-help housing will directly address the present inability of groups such as Honolulu Habitat for Humanity to get inexpensive land for the development of simple homes by and for those in need.
- Q. *What did the Legislature do to streamline government approvals and permitting of affordable housing projects?***
- A.** **SB3000, SD2, HD1, CD1** will: (1) give the counties flexibility to modify infrastructure requirements when approving low-income rental housing projects; (2) require reviewing agencies to give priority to commenting on affordable housing projects within a set time frame; and (3) allow the counties and the Land Use Commission to approve "fast track" projects with modifications. These actions will expedite affordable housing proposals by compelling agencies to act in a more timely fashion, and by reducing the risk to developers that their projects would be denied for inability of the approving authority to make changes in response to community concerns.

**Q. *What did the Legislature do to provide additional funding for affordable housing and the homeless?***

**A. HB2176, HD2, SD2, CD1 (Act 100)** will appropriate funds to: (1) identify locations for temporary homeless shelters, in partnership with the counties (\$3,200,000), and make grants to nonprofit and religious organizations for homeless and transitional housing services; (2) repair and modernize public buildings for transitional and emergency shelters (\$10,000,000), renovate existing shelters (\$5,000,000), and develop low-income housing; (3) develop affordable and mixed-use housing; and (4) make zero-interest loans for self-help home construction (\$700,000). In addition, the bill will: (1) allow public assistance recipients to receive and use rent supplement funds for public housing; (2) provide up to \$14,200,000 in additional funds to the rental housing trust fund in fiscal year 2007, by increasing the allocation of conveyance tax revenues from 30 to 50 percent; and (3) appropriate \$1,500,000 for land acquisition of the Kulana Nani property, a private government-subsidized affordable rental project in Kaneohe. These actions will begin to address the mammoth problem of Hawaii's severe homelessness crisis, by funneling money to existing providers who can start up, manage, and operate programs to meet the needs of the homeless in the shortest period of time. Further, the bill will leverage additional sources of funds to preserve and maintain affordable rental housing units that would otherwise remain vacant or become unavailable to low-income tenants.

**HB2239, HD1, SD2, CD1** implements another recommendation of the Task Force by requiring negotiation for 10-year continuation of affordable rents at, or state acquisition of, Kukui Gardens, in partnership with private developers, subject to condemnation by eminent domain if negotiations fail. The bill appropriates \$200,000 to initiate this action, which will preserve 857 affordable rental units that are otherwise irreplaceable in the current Honolulu housing market.



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## LEGISLATIVE ACTION BRIEF

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### AGRICULTURE

**Q. *There has been tremendous concern in the agriculture community regarding the condition of our irrigation systems. How is the Legislature planning to address the needs of irrigation systems?***

**A.** Farmers across the State depend on various irrigation systems for water to irrigate their crops. The survival of the agricultural industry in Hawaii is dependent on sound, dependable, and functional irrigation systems. There are two measures, **SB2753, SD1, HD2, CD1** and **HB2179, HD2, SD2, CD1**, that were passed to address some of the State's irrigation systems that are in critical disrepair. **SB2753, SD1, HD2, CD1** addresses some of the operations and maintenance problems that the East Kauai Water Users' Cooperative face with the east Kauai irrigation system. The east Kauai irrigation system provides water for a variety of purposes, including farmers in the Kapaa area, the Fern Grotto, a popular tourist destination, and the Wailua reservoir, which feeds water into public fishing areas, campgrounds, and an educational center for children. Despite user fees charged to system patrons, the system is in need of financial assistance for upkeep and repairs. Thus, this measure provides the necessary funds to assist the East Kauai Water Users' Cooperative to operate and maintain the system.

**HB2179, HD2, SD2, CD1** addresses several irrigation systems located throughout the State. Specifically, this measure establishes the Irrigation Repair and Maintenance Special Fund and provides that the Board of Agriculture will administer the fund. The measure appropriates \$1,500,000 for the Irrigation Repair and Maintenance Special Fund and requires \$1,500,000 of federal matching funds to be deposited into the fund. Also the measure appropriates \$11,886,000 for the repair and maintenance of the east Kauai irrigation system, the Waimanalo irrigation system, the Molokai irrigation system, the Waimea irrigation system, and the lower Hamakua irrigation system.

**HB2179** also requires that the fund be used to repair and maintain the east Kauai irrigation system; the Kekaha ditch; the Kokee ditch; the Maui Land/Pioneer Mill irrigation system; Waiahole ditch; the lower Hamakua irrigation system; the Molokai irrigation system; the upcountry Maui irrigation system; the Waimanalo irrigation system; the Waimea irrigation system; the east Maui irrigation system; the Kauai coffee irrigation system; the west Maui irrigation system; the Kau irrigation system; the Honomalino irrigation system; the Wahiawa reservoir and ditch system; and other privately owned irrigation systems on former sugarcane and pineapple plantation lands that have been converted to diversified agriculture.

**HB2179** further requires the Board of Agriculture to develop processes, policies, standards, and criteria for selecting the landowners who are to receive funding and the amount of such funding and for determining the amount of funding provided to irrigation systems owned by the State.

**Q. *Do the landowners of these systems need to do anything to be entitled to receive these funds?***

**A.** Yes. **HB2179** requires landowners to provide matching funds for irrigation repairs and to designate a majority of the land as important agricultural land in order to receive funding assistance.

- Q.** *Last year the Legislature passed monumental legislation on Important Agricultural Lands (IAL). That legislation called for incentives to be developed for farmers and landowners to designate their lands as IAL. Has the Legislature passed any incentives?*
- A.** In 2005, the Legislature passed an important measure that preserves Hawaii's precious agricultural lands. It established policies and procedures for identifying important agricultural lands within the State and for creating incentives for farmers and landowners. This year, the Legislature passed **SB2479, HD1, CD1**, which proposes a constitutional amendment to authorize the issuance of special purpose revenue bonds for agricultural enterprises serving important agricultural lands. The Legislature also passed **SB2485, SD2, HD2, CD1** to authorize special purpose revenue bonds for agricultural enterprises serving important agricultural lands if the constitutional amendment is ratified. Also, as stated in the previous answer, the moneys in the Irrigation Repair and Maintenance Special Fund are only to be used for landowners who designate a majority of their lands as important agricultural lands.

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## LEGISLATIVE ACTION BRIEF

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### AUTOMATIC APPROVAL LAW

**Q. *I've heard that Hawaii has an automatic approval law. What does it do?***

**A.** The law requires administrative agencies to adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval unless the application is subject to state administered permit programs delegated, authorized, or approved under federal law. If an agency exceeds the maximum allowable time period for determining whether to grant or deny an application, it is automatically deemed approved.

**Q. *Does the automatic approval law apply to liquor licenses and development approvals?***

**A.** Yes. Liquor licenses and developmental approvals are among the business or development-related permit, license, or approval applications subject to the automatic approval law.

**Q. *Why would an agency allow the maximum allowable time period to elapse?***

**A.** Applications are often complex and require careful scrutiny. This can take time. In some situations, a department may be understaffed or a board is comprised of volunteers. These situations can impact the time it takes to render a determination whether to grant or deny an application.

**Q. *It seems imprudent to allow an application to be automatically approved based on a lapse in time and without diligent review. Did the Legislature do anything to address this issue this session?***

**A.** Yes. The Legislature passed **SB2909, SD1, HD2, CD1**, which allows a county, or any county agency, to opt out of the automatic approval law if an ordinance is adopted to that effect. This measure will help ensure that complex applications are carefully reviewed and that thorough discussion and careful consideration are done before a decision is made on a business or development-related permit.



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## LEGISLATIVE ACTION BRIEF

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### BACKLOG OF UNSERVED ARREST WARRANTS

**Q. *There has been a lot of media attention on the backlog of unserved arrest warrants in the State. The media has stated that the State has an estimated backlog of 76,881 arrest warrants that remained unserved and this backlog includes traffic, felony, and misdemeanor warrants. The media has also reported that the unserved warrants are costing the State a potential of \$20,000,000 in unpaid fines and fees, and are creating a public safety concern. Has the Legislature determined why there is such a significant backlog in unserved arrest warrants?***

**A.** The Legislature acknowledges that there are many factors that contribute to the backlog in unserved arrest warrants. In order to better understand the various factors and in an attempt to seek a permanent solution, the Legislature has established a task force to examine the issue of unserved arrest warrants (**SCR91, SD1**). The task force is instructed to conduct a comprehensive review of the entire backlog of unserved arrests warrants, to find a permanent solution to the problem, to clear the current backlog, and to ensure that in the future, arrest warrants are served in a timely manner. The task force is instructed to recommend to the Legislature any action necessary to permanently alleviate the backlog. The task force is specifically instructed to determine the number of outstanding traffic, felony, and misdemeanor warrants and to come up with a solution that goes beyond fiscal and budgetary concerns.

In addition to the task force, the Legislature also passed a measure requiring the Judicial Council to conduct not only a review of the entire backlog of unserved warrants but also to address the specific issue of arrest warrants that need to be served on persons incarcerated in the State's correctional facilities (**HB3016, HD1, SD1, CD1**).

**Q. *Would hiring more persons to serve the outstanding warrants help to alleviate the backlog?***

**A.** The Legislature has authorized the Attorney General to adopt rules to allow service of warrants by retired police and public safety officers to assist in reducing the backlog of unserved arrest warrants (**SB2581, SD1; Act 28**). The types of warrants covered by this measure include warrants issued due to the defendant's nonappearance at court or noncompliance with the terms and conditions of sentencing, as well as warrants for violations or offenses for which the punishment is not imprisonment.

**Q. *What about prisoners who are not served warrants for offenses or violations that are separate from the offense for which they are incarcerated? Has the Legislature done anything to address this specific problem?***

**A.** The Legislature also passed a measure that addressed the issue of serving traffic warrants to persons who are incarcerated or under the authority of the Hawaii Paroling Authority (**HB3016, HD1, SD1, CD1**). Currently, the number of unserved traffic warrants increases when persons sentenced to prison miss a court appearance because a bench warrant is automatically issued against them. The warrants are not served to them in prison because the backlog is so extensive and law enforcement resources are devoted to the service of warrants for persons charged with

more serious crimes. In response to this specific issue, **HB3016, HD1, SD1, CD1** establishes that where a person's parole is revoked or suspended, the Hawaii Paroling Authority is required to inform the courts and arresting authorities of any outstanding traffic warrants so that they can be timely served upon the parolee. This measure also requires the courts to serve the defendant in any criminal proceeding with any outstanding traffic warrants.

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## LEGISLATIVE ACTION BRIEF

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### BUSINESS REGULATION

**Q. *During this session, the Legislature repealed Hawaii's current uniform securities law and adopted the 2002 Uniform Securities Act to better align Hawaii's securities law with the laws of other states. Were there significant provisions, different from the 2002 Uniform Securities Act, adopted by the Legislature?***

**A.** Yes, in addition to repealing Hawaii's current securities laws and adopting the 2002 Uniform Securities Act, **SB743, SD2, HD2, CD1** adopted a few provisions different from those in the 2002 Uniform Securities Act. These provisions are as follows:

- Civil penalties of \$50,000 per violation for violations of the Uniform Securities Act, instead of civil penalties of \$100,000;
- The withdrawal of the registration of a broker-dealer, agent, investment adviser becomes effective 60 days, rather than 90 days, after the filing of the application to withdraw; and
- Discretion of the Commissioner of Securities to institute a revocation or suspension proceeding within one year, rather than two years, after the withdrawal becomes effective.

**Q. *When does Hawaii's new uniform securities law take effect?***

**A.** The new uniform securities law takes effect on July 1, 2008. This effective date was enacted in order to allow the Commissioner of Securities within the Department of Commerce and Consumer Affairs to engage in rulemaking to implement the new law.

**Q. *The business registration law was amended to clarify and correct ambiguities or errors. What are the significant amendments, if any, made by this bill?***

**A.** In addition to general housekeeping amendments made by **HB2313, SD1**, this bill also

- Adds a section to the general partnership law regarding the types of activities of a foreign general partnership that do not constitute business transactions;
- Requires general partnerships electing to become limited liability partnerships (LLP) to file the LLP annual report in lieu of the general partnership annual statement; and
- Requires, as one condition to reinstatement, that an administratively dissolved, cancelled, or terminated professional corporation, general partnership, limited partnership, or limited liability company show that all taxes owed have been paid, will be paid, or are being contested.

**Q. *The Code of Financial Institutions (Code) under Chapter 412, Hawaii Revised Statutes has not been comprehensively reviewed since its enactment in 1993. The Legislature enacted a bill this session, based on a comprehensive review, that updates the Code. What significant changes are enacted by this bill?***

**A. **HB2315, SD2**** updates the Code by eliminating obsolete, unnecessary, or redundant requirements, and increasing consumer protection and regulatory flexibility. Among the significant changes enacted by the bill are the following:

- Elimination of the requirements that Hawaii financial institutions: (1) file semi-annual statements of assets and liabilities; (2) file amendments to articles of incorporation and bylaws, (3) notify the Commissioner of Financial Institutions (Commissioner) when opening, relocating, and closing automatic teller machines; and (4) comply with various provisions related to access to safety deposit boxes;
- Increase of the threshold for reporting illegal acts from amounts exceeding \$10,000 to amounts exceeding \$100,000;
- Expansion of the range of low-income residential property investments permitted to banks, saving banks, savings and loan associations, and depository financial services loan companies, to include limited liability partnerships, limited liability companies, and corporations;
- Authorization of trust companies to serve as conservators and allowing trust companies or banks to engage in trust business to continue to serve as conservators after a merger, consolidation, or conversion;
- Empowerment of the Commissioner to: (1) waive annual fees on a year-to-year discretionary basis; (2) request records and other information from any financial institution at any time for good cause; and (3) when ordering the removal of a financial institution-affiliated party from office or employment, prohibit the party from participating in the affairs of any other financial institution;
- Imposition of requirements that financial institutions: (1) give notice of, and obtain approval from the Commissioner to use particular names; and (2) notify and provide other information to the Commissioner when closing an operating subsidiary or service corporation to ensure proper disposal of assets and liabilities; and
- Protection from subpoena or other legal process for records to attorneys, and for other information collected, maintained, and used by the Commissioner or other agencies.

**Q. *Current business regulations in Hawaii permit consumers to ship in wine only if the other state has an equal reciprocal shipping privilege with Hawaii. Did the legislature change this restrictive law?***

**A. Yes, **HB1968, HD1, SD1, CD1**** establishes a new direct wine shipper permit process to allow wineries to ship wine to Hawaii residents. This process allows a permit holder to sell and annually ship to any person, 21 years or older, no more than six 9-liter cases of wine for personal use only. As a safeguard, the carrier of a shipment is required to obtain the signature of a person 21 years or older before delivery of a shipment of wine. County liquor commissions are empowered to adopt rules to implement the permit process, with the issuance of permits to begin no later than January 1, 2007.



- Q.** *Incorporation of "Responsible Business Corporations" and a tax incentive for these corporations received much attention during this legislative session. What would these laws do?*
- A.** **HB3118, HD1, SD1, CD1** establishes a task force within the Department of Commerce and Consumer Affairs to determine how to provide for incorporation of responsible companies that consider the public interest in doing business and integrate the public interest into the structure and duties of the business. This bill instructs the task force to use, as a starting point in its deliberations, the intent and provisions of HB3118, SD1 (2006). The task force is also required to submit findings and recommendations, including proposed legislation, before the 2007 Regular Session.



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## LEGISLATIVE ACTION BRIEF

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### CONDOMINIUMS AND PLANNED COMMUNITY ASSOCIATIONS

**Q. *The Legislature recently enacted a significant recodification of Hawaii's condominium law. Why was it necessary to "fine tune" and improve the recodification this year, so soon after the previous major legislation?***

**A.** In the 2004 Session, the Legislature enacted SB2210, SD2, HD1, CD1 (Act 164), with the purpose of updating, clarifying, organizing, deregulating, and providing for consistency and ease of use of the condominium property regimes law. Act 164 had the additional purposes of initiating a two-year pilot program in condominium management dispute resolution, as well as funding post-enactment educational activities for one year. Act 164 repealed the parts of the existing condominium law (Chapter 514A, Hawaii Revised Statutes) relating to general provisions and definitions, condominium management, and arbitration and mediation, and established a new Chapter 514B with parts relating to general provisions, applicability to condominiums created after July 1, 2005, and management of condominiums. Act 164 required that provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, also be enacted effective on July 1, 2005.

In the 2005 Session, the Legislature enacted SB1132, SD2, HD1, CD1 (Act 93), which established new parts in Chapter 514B relating to creation, alteration, and termination of condominiums; registration and administration of condominiums; and protection of condominium purchases. Act 93 delayed the repeal of the current law, Chapter 514A, until July 1, 2006.

In the 2006 Session, the Legislature enacted **HB3225, HD1, SD1, CD1**, a principal effect of which will be to clarify that the current condominium law (Chapter 514A) will apply only to condominiums created prior to July 1, 2006, except that an existing project may be governed by the new law (Chapter 514B) if the developer elects to register the project with the Real Estate Commission. Condominiums created or registered with the Commission on or after July 1, 2006, will be governed by Chapter 514B. **HB3225, HD1, SD1, CD1** also repeals the earlier repeal of Chapter 514A, thus leaving both the "old" and the "new" condominium law chapters in place.

**Q. *Are there substantive differences between "old" Chapter 514A and "new" Chapter 514B?***

**A.** Yes, there are a number of important differences. New condominiums created on or after July 1, 2006, or those whose developer elects to be governed under Chapter 514B, will benefit from the following provisions of **HB3225, HD1, SD1, CD1**. Amendments of association documents that do not invalidate the reserved rights of the developer will require the vote or written consent of a majority of owners. Amendments of the condominium declaration will not be required to change open or landscaped common elements or to make minor changes to common elements for the benefit of one owner. Fines may be authorized by any board of directors after notice to the unit owner, who has an opportunity to be heard. The owner may appeal the fines. Associations will have greater flexibility to reduce the number of directors on the board. An owner who is also an employee of the association's managing agent will no longer be prohibited from serving as a director, subject to recusal on matters affecting the association's management contract. Associations and their boards will be immunized from liability for failure of an owner to purchase insurance, and contractors and vendors will no longer be required to provide certificates naming the association, board, and its managing agent as additional named insureds. Associations will be able to demand and receive payment of delinquent common expenses from the tenant or rental agent of a delinquent absentee owner. Costs and expenses of leasehold rent renegotiation

will be assessed only to the remaining lessees whose rent is to be renegotiated, and not to all owners. The percentage of owners who must act to authorize purchase of the leased fee interest will be reduced from 75 to 67 percent.

**Q. *What else did the Legislature do affecting condominiums in the 2006 Session?***

- A. SB2545, SD2, HD2, CD1** will extend the condominium management dispute resolution program by establishing the program under Chapter 514B, the law governing new condominiums created on or after July 1, 2006, until June 30, 2009. Under this extension, if a dispute is not resolved by mediation, in addition to any other legal remedies that may be available, a party who participated in the mediation may file a request for a hearing with the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs. The Director of Commerce and Consumer Affairs must report to the Legislature prior to the 2007 and 2008 Sessions on the operation and effect of the mediation program.

**Q. *What did the Legislature do for planned community associations in the 2006 Session?***

- A. SB2193, SD1, HD1, CD1** will require that all meetings of a planned community association's board of directors, except executive sessions, be open to members to provide input. In addition, association documents must be available to members at no cost for inspection or 24-hour loan. Minutes must be retained for at least five years, and copies must be transmitted to a member upon request and at the member's expense. Members will no longer have to pay for the cost of inspection of association documents pertaining to elections, unless the board determines that they be charged. The purpose of these provisions is to provide greater transparency, consistency, and accountability for board actions that affect association members and which may otherwise be taken without the members' knowledge and consent.

**HB1935, HD1, SD1, CD1** will require that "disclosure statement" for residential real property offered for sale in a planned community include the planned community declaration and association documents.

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## LEGISLATIVE ACTION BRIEF

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### DEPOSIT BEVERAGE CONTAINER PROGRAM

- Q. *Hawaii's Deposit Beverage Container Program has successfully diverted over a half a billion bottles and cans from landfills. Did the Legislature pass any measures to encourage the redemption of larger containers?***
- A.** Yes. The Legislature passed **SB3181, SD2, HD2, CD1**, which increases the volume limit of a deposit beverage container from sixty-four to sixty-eight fluid ounces to encourage redemption of larger containers, such as two-liter bottles.
- Q. *A large percentage of eligible deposit beverage containers are redeemed. However, more can be done to make it easier and more convenient for customers to redeem containers. Did the Legislature do anything to improve the redemption process?***
- A.** Yes. The redemption process can be improved by giving customers greater access to reverse vending machines. In recognition of this, the Legislature passed **SB3105, SD2, HD2, CD1**, which makes several changes to the Reverse Vending Machine Rebate Program. Under the measure, a person does not need to be a dealer or recycler to apply for a rebate of fifty percent of the actual cost of a reverse vending machine, including shipping and handling.
- Q. *Does a person have to apply for the rebate before purchasing the reverse vending machine?***
- A.** No. The measure eliminates the need to apply for the rebate before purchasing the reverse vending machine. It also extends the date, by which a reverse vending machine must be installed and operational to qualify for a rebate, to December 31, 2007.
- Q. *When does the Reverse Vending Machine Rebate Program end?***
- A.** The Legislature extended the sunset date on the Reverse Vending Machine, Redemption Center, and Recycling Infrastructure Improvement programs to June 30, 2009.



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## LEGISLATIVE ACTION BRIEF

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### DISASTER PREPAREDNESS

**Q. *The State needs to have a comprehensive emergency preparedness program to mitigate hazards, enhance preparedness for major disasters, and accelerate response and recovery when disaster strikes. The goal should be to enhance and fortify the State's ability to save lives and protect property in the event of disaster. How can the Legislature help?***

**A.** The Legislature enacted **SB2214, SD2, HD3, CD1**, to increase from \$1 million to \$2 million the amount the governor may expend from the major disaster fund and increases from \$1 million to \$2 million the amount to be made available solely for matching federal disaster relief funds. The measure makes appropriations as follow: (1) \$1 million to purchase or improve early warning systems; (2) \$250,000 for public education programs on disaster preparedness; (3) \$2 million for loss mitigation or reduction efforts or programs; (4) \$250,000 to update tsunami inundation and evacuation maps; (5) \$1 million to establish and maintain an emergency supply cache; and \$5 million for around-the-clock civil defense alert staff. An appropriation is also made of \$2 million as a grant to the American Red Cross for disaster relief efforts, and another grant is made of \$2 million to the Queen's Medical Center for an emergency backup electrical system.

**Q. *How do the appropriations help?***

**A.** The State Civil Defense is basically performing all of the functions to which the appropriations attach. All that was needed was more funding.

**Q. *The state's civil defense has long been taken for granted. Why the sudden attention to it?***

**A.** The State needs to significantly improve its emergency preparedness program for major disasters and to accelerate response and recovery operations during and after disasters. This measure represents the priority concerns of the State Civil Defense. This became painfully apparent with the 9/11 attacks and the recent heavy flooding from prolonged torrential rainfall in March of this year.

**Q. *To what kinds of disasters does the State Civil Defense respond?***

**A.** Civil defense hazards and disasters include hurricanes, flash floods, tsunamis, earthquakes, volcanoes, subsidence of land or landslides; urban fires, power failures, wild fires, hazardous material situations, droughts, aircraft accidents, tornadoes and water spouts, dam failures, radiological incidences, terrorism, and civil disorders.

**Q. *What is involved in emergency and disaster preparedness?***

**A.** Emergency and disaster preparedness basically involves continuous planning, effective and efficient response including evacuation, training, and the development of infrastructure and warning systems. To make this happen, coordinated effort and planning are necessary over a

broad spectrum of public and private entities, including the State, counties, federal government, national guard, law enforcement, and hospitals. The aim is prevention, protection, response, and recovery.

**Q.     *Why is this measure so important?***

- A.**     The State must have a comprehensive emergency preparedness program to mitigate hazards, enhance preparedness for major disasters, and accelerate response and recovery when disaster strikes. The goal is to enhance and fortify the State's ability to save lives and protect property in the event of disaster.

**Q.     *What other measure was passed to appropriate funds for civil defense?***

- A.**     **HB970, HD1, SD1, CD1** made an emergency appropriation of \$2,000,000 to the Department of Defense to cover operational expenses associated with February and March 2006 storm recovery efforts, including but not limited to state civil defense 24-hour emergency operations center overtime costs expended by civil defense workers, contractors who helped to pump reservoirs to maintain safer water levels, national guard personnel on state active duty status, and Blackhawk helicopter operating expenses. That measure also made emergency appropriations to the Department of Agriculture, Department of the Attorney General, Department of Land and Natural Resources, Department of Transportation, and the City & County of Honolulu to assess, improve, and restore dams; stabilize slopes and roadways; clean up storm damage; clean up the Ala Wai Canal; plan, design, construct, and dredge Wailoa small boat harbor; and the canal by Waieka boat ramp; replace a damaged radio repeater on Kauai; and review legal issues on dam and reservoir failures.



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## LEGISLATIVE ACTION BRIEF

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### EDUCATION

**Q.** *I keep reading in the paper about the over \$500 million backlog in public school repair and maintenance projects. The roof at my son's school needs to be fixed. What is being done to address this major problem?*

**A.** This session, the Legislature passed **SB2956, SD2, HD2, CD1**, or the "Fix Hawaii's Schools Act," which appropriates \$160,000,000 in general funds for the renovation of Department of Education (DOE) classrooms statewide. The measure directed another \$35,000,000 in general funds for the repair and maintenance (R&M) of DOE school facilities, and allocated an additional \$40,000,000 from the proceeds of the sale of general obligation bonds for DOE school facilities R&M, for a grand total of \$235,000,000.

Also passed this session was **HB1891, HD2, SD2, CD1**, which increases the amount of funds that may be deposited into the State Educational Facilities Improvement Special Fund from \$45,000,000 to \$90,000,000, and specifies that the funds deposited shall be used solely for public school capital improvement program needs. The measure shall be repealed in three years.

Realistically, these appropriations were not intended to solve the R&M backlog issue in one shot. However, considered along with general budget allotments, as well as specific allocations made to certain schools in other measures passed this session, it is believed that by the beginning of the next session, the DOE R&M spectre will have been brought down to a workable level.

**Q.** *I hear that Hawaii is still dealing with a shortage of teachers in the public schools. What is being done to support Hawaii public school teachers?*

**A.** The Legislature recognizes the enormous efforts and the sacrifices made by Hawaii teachers to ensure that our children receive a quality education. For many complex reasons, Hawaii still finds itself contending with a shortage of teachers in certain areas. In response to this situation, the Legislature passed **SB3195, SD2, HD2, CD1**, which allocates \$150,000 to supplement the Department of Education (DOE) budget for increased teacher training and support. These additional moneys shall be used specifically to address shortage areas.

Also passed this term was **HB1862, HD2, SD2, CD1**, which allows the DOE to re-hire teachers and administrators who have retired from the DOE to fill certain positions beginning one year after their retirement. One rationale behind this measure is that retired teachers and administrators possess a wealth of experience that they would bring with them to new positions when they are re-hired, which would benefit both their students, as well as other, newer teachers in the school. This measure shall be repealed in 2011, at which point it is hoped that the DOE will no longer be facing a shortage of teachers. If a shortage were to continue at that point, however, further legislative action may be considered.

In recognition of the significant contributions made by substitute teachers in the public schools, the Legislature passed **SB3197, SD2, HD1, CD1**, which increases the substitute teacher full-workday pay scale to \$125, \$136, and \$147 per day.



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## LEGISLATIVE ACTION BRIEF

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### ENERGY

**Q. *Hawaii depends on petroleum for about ninety percent of its energy needs. That makes Hawaii extremely vulnerable to supply disruption. At the same time, Hawaii has abundant renewable energy resources such as solar, wind, geothermal, biomass, and wave. Was any legislation passed to help Hawaii become more energy self-sufficient?***

**A.** Over the years, the Legislature has steadily worked towards helping Hawaii achieve greater energy self-sufficiency. The Legislature is keenly aware of the pressing need to increase statewide energy-efficiency initiatives and use of renewable energy resources. This session, the Legislature took a comprehensive approach and passed two omnibus energy packages, **SB2957, SD2, HD2, CD1** and **HB2175, HD2, SD2, CD1 (Act 96)**, as well as several other measures to assist Hawaii in meeting its energy goals.

**Q. *Did the Legislature do anything to help consumers conserve energy?***

**A.** Yes. The Legislature understands that homeowners and businesses may want to install renewable energy technology systems, but may be prohibited by the cost. In recognition of this, **SB2957, SD2, HD2, CD1** increases the renewable energy technology income tax credits for solar-thermal and photovoltaic energy systems installed in single-family residential property and increases the income tax credits for wind-powered and photovoltaic energy systems installed in commercial property. The measure removes the 2008 sunset date for all renewable energy technology income tax credits to promote continued installation of these systems.

The measure also establishes the Solar Water Heating Pay As You Save pilot project. The pilot project will enable a residential electric utility customer to defer the up-front expense of a residential solar hot water heater system. The customer will be allowed to pay for the cost of the system over time on the customer's electricity bill as long as the estimated life cycle electricity savings from the system exceeds the cost of the system.

**Q. *It seems that despite consumer efforts to conserve electricity, electricity bills remain high. What did the Legislature do to address this?***

**A.** Hawaii's high electricity rates are generally attributable to high oil prices because Hawaii's utilities use a large percentage of oil for utility fuel. Existing policies contribute to the use of oil. One example of this is the energy costs adjustment clause that allows a utility to avoid the financial risk associated with the cost of fuel and fuel price volatility by passing the cost through to customers.

The Legislature passed **SB3185, SD2, HD2, CD1**, which encourages a utility to use renewable energy resources to produce energy while at the same time acknowledging that the utility must manage risk and earn a fair rate of return. The measure authorizes the Public Utilities Commission (PUC) to redirect all or a portion of the funds currently collected through the demand-side management surcharge by the electric utilities into a public benefits fund. The fund would be used to support energy-efficiency and demand-side management programs and services. Since this is an existing surcharge, there would be no additional cost to consumers.

The measure amends the Renewable Portfolio Standards Law to distinguish between the use of traditional renewable energy resources to generate electrical energy, and electrical energy savings brought about by the use of renewable displacement technologies or energy-efficiency technologies. The purpose for the distinction is to encourage utilities to generate electricity using renewable energy resources instead of fossil fuels. Otherwise, a utility could focus on meeting the standard with energy savings measures and not explore nonfossil fuel generated electricity.

It is important that any fuel cost savings that may result from using renewable energy resources to generate electrical energy benefit consumers too. Therefore, the measure requires the PUC to determine a rate methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity. The measure also requires the PUC to ensure that any energy costs adjustment clause requested by a public utility is designed to, among other things, fairly share the risk of fuel cost changes between the public utility and its customers.

**Q. *Did the Legislature pass any other proposals to encourage the use of nonfossil fuels?***

**A.** Yes. **SB2957, SD2, HD2, CD1** establishes a biofuel preference under the Hawaii Public Procurement Code. It requires governmental bodies to give preference to bids for biofuel, or blends of biofuel and petroleum fuel, when awarding procurement contracts for the purchase of diesel fuel or boiler fuel. The measure also expresses support for achieving a statewide alternate fuels standard.

Among the provisions of **HB2175, HD2, SD2, CD1 (Act 96)** is one that requires state agencies to implement goals to purchase alternative fuels and ethanol blended gasoline when available. The measure also accelerates the time by which energy-efficient vehicles must be phased into the state motor vehicle fleets and expands the definition of an "energy-efficient vehicle" to include a vehicle that is capable of using an alternative fuel.

**Q. *It is important that the production and availability of alternative fuels keep up with mandates to use alternative fuels. What did the Legislature do to stimulate alternative fuels technology?***

**A.** On the island of Hawaii, more electricity is produced from renewable resources than can be used. The excess renewable energy resources can be used to produce hydrogen. The hydrogen could then be used statewide as the clean fuel of choice for power generation and as a transportation fuel. **SB2957, SD2, HD2, CD1** establishes a Hawaii Renewable Hydrogen Program to manage the State's transition to a renewable hydrogen economy. The Legislature appropriated monies to a newly created Hydrogen Investment Capital Special Fund to support private sector and federal projects for research, development, testing, and implementation of the program.

The measure includes an appropriation for the Department of Agriculture to assist members of the agricultural community to develop energy projects, such as the production of biodiesel from energy crops and cellulosic ethanol from agricultural waste streams. An appropriation was also made to the Department of Business, Economic Development, and Tourism to conduct, among other things, a statewide multi-fuel biofuels production assessment of potential feedstocks and technologies.

**Q. *Were there any other proposals this session to encourage greater energy-efficiency at the state level?***

**A.** Yes. **HB2175, HD2, SD2, CD1 (Act 96)** focuses on state energy-efficiency initiatives. It establishes energy-efficiency and environmental standards for state facilities, motor vehicles, and transportation fuels. For instance, it requires state agencies to implement goals to design and construct new state buildings to meet the Leadership in Energy and Environmental Design Silver or Two Green Globes rating system, or another permissible system. It also requires, among other things, that state agencies implement goals to install solar water heating systems where it is cost-effective, and to purchase energy-efficient equipment and environmentally preferable products.

The measure also requires an advisory committee to provide the State's Energy Resources Coordinator with input on how to establish benchmarks and evaluate the State's progress in incorporating energy-efficiency and conservation measures, and to make recommendations on how and when to conduct periodic energy audits.

Among the measure's other proposals is the promotion of the state use of energy-savings contracts and a requirement that counties establish a procedure for priority processing of permit applications for construction projects that incorporate energy and environmental design building standards.

**Q. *Was anything done to address energy-efficiency in public school facilities?***

**A.** Yes. **HB2175, HD2, SD2, CD1 (Act 96)** appropriates funds to the Department of Education (DOE) to establish a full-time permanent energy coordinator position to address energy efficiency in public schools. It also appropriates funds to the DOE to develop and implement a photovoltaic, net-metered pilot project in public schools. The pilot project must include, at a minimum, a project site at one public school within each of the counties.



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## LEGISLATIVE ACTION BRIEF

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### FILM PRODUCTION TAX CREDITS

**Q. *I read in the newspaper that the film sector has been trying for the past three years to persuade lawmakers to revamp the entertainment industry tax incentives in Hawaii. Did the Legislature amend the entertainment industry tax incentives this session?***

**A.** Yes. The Legislature amended the motion picture and film production income tax credit this session by offering more favorable tax incentives to encourage more film and television productions to come to Hawaii (**SB2570, SB2, HD2, CD1**).

**Q. *Why does Hawaii need to attract more film and television productions?***

**A.** The film industry has generated approximately \$160,000,000 in tax revenues for Hawaii since 1992. Hawaii has long recognized the benefits of a film industry and the dynamic synergy it brings to our top industry, tourism. There has been a dramatic increase in the number of state and local governments attempting to attract film production, and those jurisdictions have experienced dramatic increases in in-state spending and significant growth in workforce and infrastructure development. More film and television productions in Hawaii will stimulate more direct and indirect tax revenues. According to the Department of Business, Economic Development, and Tourism, if annual film and television production expenditures were tripled, Hawaii could stand to gain more than \$39,000,000 in tax revenues.

A vibrant film industry in Hawaii infuses significant amounts of new money into the state economy, which is dispersed across many communities and businesses, thus benefiting a wide array of residents. The industry also creates more skilled and higher paying jobs. The three television series and one independent feature film in Hawaii in 2004 ("North Shore," "Hawaii," "LOST," and "Tides of War") had crews consisting of eighty-five to ninety percent Hawaii residents. Productions can be used as a destination marketing tool for the visitor industry by showing viewers at home and in the movie theaters colorful pictures of Hawaii.

**Q. *How did the Legislature revamp the motion picture and film production income tax credit?***

**A.** The current motion picture and film production income tax credit is a four percent tax credit on the costs incurred in the State in the production of motion picture or television films. The Legislature increased this tax credit from four percent to fifteen percent for qualified production costs incurred on Oahu, and to twenty percent for qualified production costs incurred on the Neighbor Islands. The amount of tax credits available would be capped at \$8,000,000 per production.

**Q. *How will Hawaii benefit from these new film production income tax credits?***

**A.** Recent television series cancellations, such as "North Shore" and "Hawaii" were due in part to the absence of cost-effective incentives that take into account the front-end budgeting methods normally used by the film industry and that allow for lower production costs. There has been a dramatic increase in the number of states that are taking film productions away from Hawaii by

offering more favorable incentives for motion picture, digital media, and film productions. Increasing the tax credit for motion and film productions will attract more productions to Hawaii, and will enable the State to compete more effectively against other jurisdictions with similar tax incentives.



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## LEGISLATIVE ACTION BRIEF

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### FIREARMS, AMMUNITION, AND DANGEROUS WEAPONS

**Q. *Did the Legislature make any changes to the Firearms, Ammunition and Dangerous Weapons Law this session?***

**A.** Yes. The Legislature passed **SB2263, SD1 (Act 27)**, which amends the Firearms, Ammunition and Dangerous Weapons Law to comply with provisions contained in the federal Brady Handgun Violence Prevention Act of 1993. This measure enhances public safety by helping state and local issuing authorities determine whether a prospective firearm owner may be disqualified from receiving a firearm.

**Q. *Does the measure affect an application for a permit to acquire ownership of a firearm?***

**A.** Yes. In addition to the existing permit application form requirements, an applicant must now also disclose the applicant's country of citizenship. If an applicant is not a United States citizen, the applicant must also disclose the applicant's alien or admission number.

**Q. *Will the measure affect an issuing authority's determination whether to issue a permit?***

**A.** Yes. If an applicant is a United States citizen, the issuing authority must perform a background check of the applicant using the National Instant Criminal Background Check System (NICS) before making a determination whether to issue a permit or deny an application for a permit.

If an applicant is not a United States citizen, the issuing authority must perform a background check of the applicant using the NICS and must check the Immigration and Customs Enforcement databases before making a determination whether to issue a permit or deny an application for a permit.

**Q. *What are the National Instant Criminal Background Check System and the Immigration and Customs Enforcement databases?***

**A.** The NICS was established pursuant to the Brady Handgun Violence Prevention Act of 1993. It is a national system that checks available records in the National Crime Information Center, Interstate Identification Index, and the NICS Index to determine if prospective purchasers are disqualified from receiving firearms.

Immigration and Customs Enforcement is the largest investigative branch of the Department of Homeland Security. It was established to more effectively enforce federal immigration and customs laws and protect the United States against terrorist attacks. It compiles databases for these purposes.

**Q. *What type of information do these databases contain?***

**A.** Records contained within the databases searched by the NICS include those of the Interstate Identification Index (e.g. millions of criminal history records), the National Crime Information Center (e.g. protection orders and active felony or misdemeanor warrants) and the NICS Index. The NICS Index is a database created solely for the use of the NICS and contains information provided by local, state and federal agencies pertaining to persons prohibited under federal law from receiving or possessing a firearm.

The Immigration and Customs Enforcement databases include information regarding persons who are unlawfully and illegally in the United States.

**Q. *Will these background checks delay an application for a permit?***

**A.** Possibly. The NICS is allegedly designed to respond within 30 seconds to background inquiries, but it is unclear how long it takes to perform a check of the Immigration and Customs Enforcement databases.

**Q. *Does this measure affect an application for a license to carry a pistol or revolver concealed on the person?***

**A.** Yes. The same criteria shall apply to an application for a license to carry a concealed weapon. If an applicant is a United States citizen, the issuing authority must perform a background check of the applicant using the NICS before making a determination whether to issue a license or deny the application.

If an applicant is not a United States citizen, the issuing authority must perform a background check of the applicant using the NICS and must check the Immigration and Customs Enforcement databases before making a determination whether to issue a license or deny the application.

**Q. *If a person is prohibited from possessing a firearm or ammunition under federal law, can the person still possess a firearm or ammunition under state law?***

**A.** No. The measure amends the Firearms, Ammunition and Dangerous Weapons Law to prohibit a person who is prohibited from possession firearms or ammunition under federal law from possessing or controlling firearms or ammunition under state law.

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## LEGISLATIVE ACTION BRIEF

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### FIREWORKS

**Q. *Did the Legislature make any amendments to the Fireworks Law?***

**A.** Yes. The Legislature passed **SB2667, SD2, HD1, CD1**, which puts limits on when fireworks can be sold, and which also amends the terminology used under the Fireworks Law to be consistent with federal law. The measure adds definitions of "aerial device" and "articles pyrotechnic"; amends the definitions of "consumer fireworks," "fireworks," "public display," and "special fireworks"; deletes the definitions of "aerial common fireworks" and "non-aerial common fireworks"; and conforms the chapter to reflect these amendments.

**Q. *What are articles pyrotechnic?***

**A.** Articles pyrotechnic means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 by the United States Department of Transportation.

**Q. *What is the effect of this on a consumer's ability to purchase fireworks?***

**A.** It makes it unlawful to purchase consumer fireworks more than five calendar days before the time periods for permissible use of consumer fireworks, which are New Year's Eve, Chinese New Year's Day, and the Fourth of July.

**Q. *Does the measure have any effect on the time of the sale of consumer fireworks?***

**A.** Yes. It makes it unlawful to sell consumer fireworks after 12:01 a.m. on New Year's Day, after 6:00 p.m. on Chinese New Year's Day, and after 8:00 p.m. on the Fourth of July.

**Q. *What is the effective date of the measure?***

**A.** The effective date of the measure is August 1, 2006.



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## LEGISLATIVE ACTION BRIEF

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### GAS CAP; OVERSIGHT OF THE PETROLEUM INDUSTRY

**Q. *What has the Legislature done about the soaring price of gasoline?***

**A.** The Legislature passed **HB3115, HD2, SD2, CD1 (Act 78, SLH 2006)** to increase oversight of the oil industry, protect consumers from artificially high prices, create a fair price indicator, and help consumers and the Legislature make more informed choices and policy decisions as the community explores what it can do to lessen the impact of rising international oil prices. The Act also indefinitely suspends the gas cap to test the argument of gas cap opponents that the cap was contributing to the high price of gasoline. The Act gives the governor the authority to reinstate the cap for thirty-day periods upon the governor's publication of a statewide notice that the reinstatement would be beneficial to the economic well-being, health, and safety of the people of the State. If the governor does not reinstate the maximum wholesale gasoline price within 180 days of September 1, 2006, the governor must submit a report to the legislature before the next regular session, explaining: (1) why the governor did not believe reinstatement would be beneficial to the economic well-being, health, and safety of the people of the State; and (2) the administration's efforts during the year to reduce the price of gasoline, increase competition in the gasoline wholesale market, and otherwise improve the gasoline market.

**Q. *Why did the cost of gasoline keep rising even with the gas cap in place?***

**A.** The price of gasoline is dependent on the international oil market, which in turn is dependent on many international events, including the growing worldwide competition for limited oil supplies and political developments and instability in oil-producing nations. The gas cap was designed to tie the price of gasoline in Hawaii to the out-of-state gasoline market so consumers would benefit from declining oil prices worldwide.

**Q. *What is the fair price indicator?***

**A.** The fair price indicator is the maximum pre-tax wholesale gasoline price that would have been in effect if the Legislature had not repealed the gas cap. The fair price indicator will help consumers judge for themselves whether the oil industry is earning unfair profits. The public utilities commission will no longer calculate and publish the weekly maximum price, but private citizens and groups can do so. The formula that has been used to determine the maximum pre-tax wholesale gasoline price has been improved to increase savings to consumers if the governor reinstates the formula maximum wholesale gasoline price. The new formula: (1) adds the weekly average of the Singapore spot daily price to the baseline price determination; (2) deletes the location adjustment factor; (3) reduces the marketing margin factor; and (4) provides for zone price adjustments and allocations. The Act gives the governor the discretion to raise the reinstated maximum price in a zone above the formula price if necessary to prevent financial hardship on any affected distributor who does not operate a refinery within the State.

**Q.     *How did the Legislature increase public oversight of the petroleum industry?***

**A.**     The Legislature improved the quality and quantity of information that the industry is required to report to the public utilities commission. Under the new petroleum industry monitoring, analysis, and reporting program, distributors are required to file weekly reports that include information about the volume, source, and cost of crude oil imported; sales volumes and prices; and the time and amount of changes in weekly wholesale prices. Distributors must also file periodic reports with information about their sources, expenses, income, and profits. The public utilities commission then analyzes these reports and publishes its analysis and all non-confidential information for the public's use in monitoring the oil industry. The Act provides penalties for failure to file the required reports and for willful false statements in the reports.

**Q.     *Are there any penalties if the petroleum industry tries to increase the price of gasoline by restricting supply to create an artificial shortage?***

**A.**     Yes, the Act prohibits unfair trade practices by the petroleum industry. Unfair practices, including restricting supply or distribution for the purpose of enhancing price, and misrepresenting the price or quality of a product, are punishable by civil and criminal penalties.

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## LEGISLATIVE ACTION BRIEF

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### HABITUAL VIOLENT FELONS

**Q. *I have heard that Hawaii has passed a "Three Strikes Law." Is the new law the same as California's "Three Strikes Law"? Can a person be sentenced to the thirty-year minimum under Hawaii's law for non-violent crimes?***

**A.** The Hawaii law is not exactly the same as California's "Three Strikes Law." The California law actually includes both two-strike and three-strike provisions. An offender falls into the two-strike category if the offender has one prior felony conviction. An offender falls into the three-strike category if the offender commits any felony after committing two prior felonies. For a second strikeout offense, there is a mandatory sentence of twice the term for the offense. For a third strikeout offense, an offender is sentenced to a mandatory life sentence with the minimum term being the greatest of either three times the term otherwise required by law for the felony conviction, twenty-five years, or the term determined by the court for the new conviction.

In contrast, the Hawaii law provides for a mandatory minimum sentence of not less than thirty years for habitual violent felons. Under Hawaii's law, in order to be considered a habitual violent offender, the following criteria must be met:

- (1) The defendant must have been eighteen or older at the time the third offense was committed;
- (2) The current conviction must be for murder in the second degree or a class A or B felony that is a crime of violence; and
- (3) The defendant must have at least two prior and separate convictions for murder in any degree, any class A or B felony that is a crime of violence, or for any federal or out-of-state offense that is comparable to a crime of violence as defined under Hawaii law.

While the California law imposes mandatory sentences after a second or third conviction for any felony, including property crimes and nonviolent crimes, the Hawaii law only applies to violent crimes.

**Q. *What types of crimes are considered crimes of violence under this new law?***

**A.** Under the new law, murder in any degree; manslaughter; assault in the first degree; kidnapping; sexual assault in the first and second degree; continuous sexual assault of a minor under the age of fourteen years old; robbery in the first and second degree; and burglary in the first degree are all considered to be crimes of violence.

**Q. *So if a person has committed three burglaries in the first degree, does the thirty year minimum sentence apply?***

**A.** No. The measure provides that the defendant's current conviction and at least one of the prior and separate convictions must be for a violent crime other than burglary. In other words, a person who has three convictions for burglary in the first degree would not be subject to the

thirty-year minimum. On the other hand, a person who has been convicted of burglary in the first degree, assault in the first degree, and is now convicted of sexual assault in the first degree would be subject to the thirty-year minimum sentence.

**Q. *How will the Legislature determine whether this new law will be effective in reducing violent crimes in Hawaii?***

**A.** This measure requires the Department of Public Safety to submit a report to the Legislature before the 2011 regular legislative session. The report is to include available data from various sentencing simulation models to assess the impact of this measure on the prison inmate population. The report is also required to include data showing the measure's effect on the inmate population in terms of the number of persons committed to the Department of Public Safety's custody, as well as the financial impact this measure has on the Department of Public Safety. Last, the report is required to have data showing the Department of Public Safety's ability under this measure to house and care for inmates.



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## LEGISLATIVE ACTION BRIEF

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### HAWAII CHILDREN'S HEALTH CARE PROGRAM

**Q. *I thought the State already provided health care coverage for uninsured children. Is the Hawaii Children's Health Care Program duplicative?***

**A.** The State provides free health insurance through the Med-QUEST office for children from birth through age 19 who live in Hawaii and meet certain household income and residency requirements. However, there is a gap group of uninsured children in Hawaii without private insurance who also do not qualify for any state or federal health care coverage. The Legislature passed **HB3116, HD2, SD2, CD1** to extend health care coverage to children who don't qualify for the State's free health insurance because their household income exceeds the QUEST and Medicaid Fee-for-Service programs' income limitation.

**Q. *Why is it important for children to have health insurance?***

**A.** Children with insurance can go regularly to their doctors for preventive and primary care. This makes them healthier and less likely to miss school and activities. Hawaii is committed to the health of its keiki and this program will reduce the adverse effects of preventable and treatable illnesses on our children's growth and development.

**Q. *Who will pay for the new program?***

**A.** The State will share the premiums equally with the mutual benefit society that provides the coverage.

**Q. *Who will be eligible for the Hawaii Children's Health Care Program?***

**A.** The program will cover uninsured children between the ages of 31 days and 18 years of age who do not have private insurance and who are ineligible for any other state or federal health care program.

Families that would otherwise be eligible for QUEST-Net may elect coverage through QUEST-Net and pay a prorated premium or may receive coverage through the Hawaii Children's Health Care Program at no charge, subject to household income limits. The QUEST-Net program is for people who are already enrolled in the QUEST or Medicaid Fee-for-Service programs, but no longer qualify because their household income exceeds income limits.

**Q. *Is this a permanent program?***

**A.** No. **HB3116** establishes a temporary three-year pilot program.



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## LEGISLATIVE ACTION BRIEF

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### HAWAII INGENUITY CORPORATION CHARTER

**Q. *I recently read an editorial comment in the newspaper that urged the Legislature to pass the Ingenuity Corporation Charter bill. Why does Hawaii need an Ingenuity Corporation?***

**A.** The Legislature passed **HB3261, HD1, SD2, CD1** this session, which establishes the Hawaii Ingenuity Corporation Charter. A vast majority of inventors do not have the collective representation, institutional strength, or financial resources that are necessary to exercise and enforce their property rights. Many inventors are forced to sell their intellectual property rights to large corporations that have the financial resources and experience to effectively improve and market the novel ideas of these inventors. The Hawaii Ingenuity Corporation will have the ability to educate inventor-entrepreneurs, supply shelter for their fledgling companies, and be a source of knowledge and experience for these companies to develop and grow.

**Q. *What type of corporation will the Ingenuity Corporation be and what will be its purposes?***

**A.** The Corporation will be a private, for profit, nonstock, membership corporation created by the State. The Corporation will enable inventors, labor unions, investors, a managing member, and public educators to create a business entity that owns and licenses intellectual and other property. The Corporation will create and maintain businesses and sell, lease, or license goods and services to other business entities. The Corporation will also negotiate with other corporations on behalf of constituency groups on issues regarding licensing intellectual property, labor, and environmental standards, and will collectively bargain on behalf of their inventors and labor organizations. Furthermore, the Corporation will create benefits for inventors, labor unions, and public educators, attract inventors to Hawaii, and build Hawaii as an inventor-friendly State.

**Q. *Who are the members of the Ingenuity Corporation?***

**A.** The membership of the Corporation will consist of five classes of members, which include educators, inventors, labor unions, investors, and a managing member. Each member will have respective duties and obligations to carry out, and will have the rights and privileges to meet and sue the board of directors of the Corporation. The Corporation also has a board of directors who will elect officers, create bylaws, determine policy, review contracts to ensure that the contracts comply with the scope of the charter, hold annual meetings, and serve as fiduciaries in the best interests of all of its members.

**Q. *How is the Legislature involved in the Ingenuity Corporation?***

**A.** The Legislature is involved in the Corporation in several ways. The legislature has established that the initial managing member will be the American Ingenuity Alliance. Any amendments to the Corporation charter can only be made by an Act of the Legislature. A provision in the charter requires the Legislature to select the managing member of the Corporation, and corporation membership can only expire by legislative action. Last, the charter can only be rescinded by the Legislature by a two-thirds vote.



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## LEGISLATIVE ACTION BRIEF

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### HIGHLY INTOXICATED DRIVERS

**Q. *Persons who are highly intoxicated are an enhanced danger while driving and deserve enhanced penalties. According to the National Transportation Safety Board, drivers with a high blood alcohol content pose an increased risk of crashes, injuries, and fatalities. Current law provides for a threshold blood alcohol concentration level of .08 percent. Was this changed?***

**A. HB2639, HD2, SD2, CD1,** creates a new category of "highly intoxicated driver," defined as a person whose measurable amount of alcohol is 0.15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood, or 0.15 or more grams of alcohol per two hundred ten liters of the person's breath, as measured at the time of the offense, or within three hours of the time of the offense.

**Q. *Why are highly intoxicated drivers such a menace on the road?***

**A.** According to the Department of Transportation, a person with a 0.15 percent blood alcohol level is 380 times more likely to be involved in a fatal crash than a non-drinking driver. Presently, thirty-two states and the District of Columbia have high blood alcohol laws that adopt the 0.15 standard. The most frequently recorded blood alcohol level among drinking drivers involved in fatal crashes was 0.18 percent. Fatality Analysis Reporting System data showed that in Hawaii from 2000 to 2004, there were 184 alcohol related fatal crashes that involved 196 drivers with positive blood alcohol readings. Of those 184 alcohol related fatal crashes, 85 crashes involved drivers who had blood alcohol readings of 0.15 percent or higher.

**Q. *What are the penalties for being a highly intoxicated driver?***

**A.** An arresting law enforcement officer must take possession of the motor vehicle registration and, if the motor vehicle being driven is registered to the intoxicated driver, remove the license plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle.

There is an administrative license revocation penalty of a mandatory six-month revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the highly intoxicated driver who would not qualify for a conditional license permit.

There is a criminal penalty of prompt suspension of license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period, in addition to the usual drunk driving penalties.

**Q.     *What is the effective date of this Act?***

**A.**     This Act takes effect next year on July 1, 2007. The reason for the delayed effective date is to give time for the authorities time to formulate new procedures and forms, and to update computer programs.

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## LEGISLATIVE ACTION BRIEF

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### IDENTITY THEFT

**Q. *Identity theft is a growing problem in Hawaii. Has the Legislature made any efforts to combat this problem?***

**A.** According to Federal Trade Commission (FTC) data, Hawaii ranked fifth highest in the nation for fraud complaints per 100,000 people and thirty-third in the nation for reported number of identity theft victims (50.7 victims per 100,000 people) in 2004. As a result of these findings, the Hawaii Anti-Phishing Task Force was established in 2005 to develop state policy on how best to prevent further occurrences of phishing and other forms of electronic commerce-based crimes in the State.

In the course of its discussions, the Task Force determined that identity theft was a more pervasive and serious problem than was previously recognized in the State. Its recommendations focused primarily on providing law enforcement with better tools to prosecute identity theft related activities, and determining how government agencies can better protect personal information currently found in accessible public records. A written report of the Task Force's finding and recommendations, including proposed legislation, was submitted to the Legislature before the 2006 Regular Session.

By taking into consideration the Task Force's report and proposed identity theft legislation from the Department of Commerce and Consumer Affairs, the Legislature this session passed a package of identity theft measures (**HB1871, HD1, SD2, CD1; HB2535, SD2; HB3244, HD1, SD2, CD1; SB2159, SD2, HD1, CD1; SB2290, SD2, HD1, CD1; SB2292, SD2, HD1, CD1; and SB2293, SD2, HD1, CD1**) that take a major step forward in bringing the business, law enforcement, and government communities together to effectively track and combat identity theft crimes in Hawaii. The Legislature also changed the name of the Hawaii Anti-Phishing Task Force to the Identity Theft Task Force and extended its life to December 31, 2007, so that it may continue to develop policies and procedures to effectively prevent and combat identity theft crimes in Hawaii (**HB3244, HD1, SD2, CD1**).

**Q. *I recently read in the newspaper that more than 40,000 state residents who enrolled in certain health and group life insurance plans in 1999 are at risk for identity theft due to the theft of some insurance company records. Is there any new legislation that will require businesses to notify me that the confidentiality of my personal may be in jeopardy?***

**A.** Yes. Beginning January 1, 2007, any business doing business in or located in Hawaii and any government agency that owns, licenses, collects, or maintains personal information of Hawaii residents will be required to notify affected persons that a security breach has occurred following the discovery of or receiving notification of the breach (**SB2290, SD2, HD1, CD1**). Notifying consumers that the confidentiality of their personal information may be in jeopardy will enable consumers to take preventive measures sooner, such as placing a security freeze on their credit reports, which will stop identity thieves from committing more crimes with their stolen personal information.

In this particular case, notification to the 40,000 affected state residents was delayed because notification could have impaired the federal investigation, and the U.S. Secret Service and the U.S. Postal Inspection Service made a request that the theft not be publicly disclosed.

immediately. This measure will also allow notification to be delayed if the notice may impede a criminal investigation or jeopardize national security.

**Q. *Once I receive notification that there has been a breach in the security of my personal information, what can I do to prevent my stolen personal information from being used to commit identity theft crimes?***

**A.** One form of identity theft occurs when a person steals a consumer's identity and opens up new lines of credit in that consumer's name. Beginning January 1, 2007, consumers who are vulnerable to or victims of this type of identity theft will be able to place a security freeze on their credit reports (**HB1871, HD1, SD2, CD1**). A security freeze is more effective than a fraud alert under federal law because studies have shown that criminals were still able to secure credit in a victim's name despite the fraud alert being in effect. A security freeze will prohibit a consumer credit reporting agency from releasing any information to unauthorized parties without the consumer's express authorization, and will provide consumers more control over who has access to their credit report. The security freeze will remain in effect until matters are resolved to the consumer's satisfaction and the consumer requests and authorizes the freeze be lifted.

**Q. *Businesses and government agencies collect, maintain, and use personal information of Hawaii residents for legitimate business or government purposes. Are there any new measures that require businesses and government agencies to protect the confidentiality of my personal information, especially my social security number?***

**A.** Yes. Business records are a leading source for identity thieves to obtain personal information of other individuals. There have been repeated instances of businesses carelessly dumping boxes containing scores of customers' personal information in dumpsters that identity thieves can easily fish out and use. Beginning January 1, 2007, businesses and government agencies that collect personal identifying information of Hawaii residents will be required to take reasonable measures to protect this information from unauthorized access by properly discarding and destroying the information (**SB2292, SD2, HD1, CD1**). This requirement will encourage businesses and government agencies to maintain the confidentiality and integrity of their records that contain personal information of Hawaii residents.

Moreover, one of the tools most frequently used to steal an individual's identity is that individual's social security number. The federal government originally introduced social security numbers as a way to keep track of payroll taxes, but its use has spread so that the number has virtually become a universal identifier. Beginning July 1, 2007, businesses and government agencies that collect and use social security numbers will be prohibited from disclosing an individual's social security number to the general public, including printing social security numbers on identification cards or mailings to customers, and transmitting social security numbers to third parties (**SB2293, SD2, HD1, CD1**). This requirement will aid in minimizing the abuses associated with the fraudulent use of social security numbers by restricting its use as an identifier.

**Q. *What happens if a business violates any provision under SB2290, SD2, HD1, CD1 (Security Breach Notification), HB1871, HD1, SB2, CD1 (Security Freeze), SB2292, SD2, HD1, CD1 (Disposal of Personal Information), and SB2293, SD2, HD1, CD1 (Social Security Number Protection)?***

**A.** The Attorney General or the Executive Director of the Office of Consumer Protection is allowed to bring a cause of action against any business that violates any provision under these measures,



and seek up to \$2,500 for each violation. A private cause of action is also permitted for actual damages sustained by the injured party and attorneys' fees.

**Q. *I heard identity theft-related crimes are difficult to combat because the criminal punishment is not sufficient enough to fit or hinder these crimes. Is there any new legislation that will help to curb the rise in this type of crime?***

**A.** Yes. Hawaii law enforcement has found it difficult to curb the rise in identity theft-related crimes as identity thieves in possession of personal information who have not yet caused a monetary loss to the victim cannot be prosecuted for crimes other than petty misdemeanor theft. This nominal criminal consequence is inadequate to address and deter possession of another's personal information, and in fact perpetuates the larger problem of identity theft.

This session, the Legislature passed a measure that prohibits the possession of confidential personal information by a person who intentionally or knowingly possesses without authorization any confidential personal information of another (**SB2159, SD2, HD1, CD1**). A violation of this provision is a class C felony. Furthermore, the offenses of Identity Theft in the Third Degree and the Unauthorized Possession of Confidential Information are also added as enumerated offenses within the Repeat Offender Statute, which allows more severe sentencing.

Furthermore, the use of a computer to commit theft is a growing problem in Hawaii and the number of crimes that are perpetrated via the Internet is increasing. The use of a computer as an instrument of the crime offers the perpetrator relative anonymity, a quick and easy mechanism to commit fraud, and the potential for sizable financial gain. This session, the Legislature also passed a measure that amends the offense of Use of a Computer in the Commission of a Separate Crime by including the act of using a computer to obtain control over the property of the victim as an offense prosecutable as either theft in the first or second degrees (**HB2535, SD2**).

**Q. *Are there any other measures that will aid law enforcement agencies in the State keep track of identity theft-related crimes?***

**A.** Law enforcement agencies track identity theft crimes in various ways and the current tracking methods do not provide accurate statistical information about identity theft in the State. A uniform system of tracking will provide law enforcement agencies with a better understanding of the depth and pervasiveness of the problem in Hawaii. The High Technology Crime Unit and the Crime Prevention and Justice Assistance Division of the Department of the Attorney General were appropriated funds to develop a uniform system to track identity theft crimes (**HB3244, HD1, SD2, CD1**). Once adopted and implemented by law enforcement authorities, the uniform tracking and reporting system will yield better statistics on the range and breadth of identity theft-related crimes. The compiled data will be useful to support a future application to the U.S. Secret Service to designate Hawaii as one of its regional centers for the Electronic Crimes Task Force.



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## LEGISLATIVE ACTION BRIEF

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### INCOME TAXES

**Q. *Hawaii's resurgent economy and the positive economic trend forecast for both Hawaii and the nation has resulted in a substantial budget surplus, providing the Legislature with an opportunity for the first time in many years to provide income tax relief. Was this done?***

**A.** The Legislature expanded the income tax brackets and increased the standard income tax deduction for individuals filing single or joint returns or as a surviving spouse or head of household. The Legislature also created a tax credit for those affected by the Manoa Stream flood in 2004 on Oahu, as well as the flooding in all counties in 2006 caused by the record rainstorms between February 20 and April 9. **(HB957, HD1, SD1, CD1).**

**Q. *What do these amendments do for taxpayers in Hawaii?***

**A.** These amendments will bring residents more in line with the economic realities of the high cost of living in Hawaii, bring long-term tax relief to low and middle income families, and provided a measure of relief to those facing losses due to unforeseen natural forces.

**Q. *What has been the problem with the income tax brackets in Hawaii?***

**A.** In its most recent report, the tax review commission stated that the state income tax brackets are so compressed that people on public assistance pay income taxes, while the highest rate for married taxpayers filing jointly begins when their taxable income reaches just over \$80,000. Today, the median income of a family of four in Hawaii, with both parents working, is approximately \$70,000. This means that if this hypothetical middle class family earned only \$900 more each month, they would be taxed in the same bracket as a family with an annual income of \$900,000.

**Q. *How did the previous income tax brackets compare with other states?***

**A.** The previous Hawaii income taxation tables actually imposed a financial penalty on most middle class families in Hawaii. Comparisons with the average income in other states are meaningless when the cost of housing, food and clothing, education, and transportation are factored in. In reality, a \$70,000 family income in Hawaii buys much less than a \$70,000 family income in most other cities in the United States. Hawaii's income tax brackets needed to reflect this reality.

**Q. *To what extent were the tax brackets expanded?***

**A.** The income tax brackets were expanded by about 20 percent.

**Q.     *By how much was the standard income tax deduction raised?***

**A.**     The standard income tax deduction was raised to 40 percent of the federal level, which is estimated to help more than half of all taxpayers.

**Q.     *When does the tax relief take effect?***

**A.**     The tax relief will apply beginning in 2007.

**Q.     *What will be the cost to the State of the total income tax relief?***

**A.**     It has been calculated that the estimated cost is about \$50 million. Of this amount, about \$40 million is attributable to the expansion of the income tax brackets while \$10.8 million is attributable to the raise in the standard deduction. In addition, the tax credit relief to flood victims is estimated to cost about \$9.5 million.

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## LEGISLATIVE ACTION BRIEF

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### LAND AND NATURAL RESOURCES

**Q. *There has been a lot of news coverage about the commercial and residential development in Kakaako. From what has been said in the media, it does not appear that the Hawaii Community Development Authority provided the public very many opportunities to voice its opinion. What has the Legislature do to address this issue?***

**A.** The Hawaii Community Development Authority was created to join the strengths of private enterprise and public development and regulation into a new form capable of long-range planning and implementation of improved community development. However, current procedures used by the authority for developing its master planning functions and community development districts fail to adequately notify Kakaako occupants, as well as the general public, and do not appear to contemplate or give enough deference to the public's testimony and suggestions. Rather, it appears that some important issues have not been addressed for many years. This year, the Legislature passed legislation, **SB2090, SD2, HD1, CD1**, which provides better public notification procedures. The measure requires the authority to provide more community and public notice for its public hearings; render any decision for an amendment to the authority's community development rules, or for the acceptance of a developer's proposal to develop lands under the authority's control, at a separate hearing from the hearing at which the proposal was presented; allow the public an opportunity to testify at the decision-making hearings; and require the authority to notify the President of the Senate and Speaker of the House.

**Q. *How did the Legislature address the commercial and residential development?***

**A.** In 2005, the Hawaii Community Development Authority announced its development proposal selection for its Kakaako land makai of Ala Moana Boulevard. Following the announcement, many community groups vehemently opposed the proposed development. After the Legislature held several of its own public hearings, the public sentiment was in opposition to the sale of the fee interest in any state-owned lands in the Kakaako Community Development District and that the opposition extends to the development of any residential development in the district makai of Ala Moana Boulevard. In response, the Legislature passed **HB2555, HD2, SD2, CD1**, which encourages responsible development in the heart of Honolulu by prohibiting the authority from selling or otherwise assigning the fee simple interest in any public lands in the Kakaako Community Development District (District) or approving any plan or proposal for residential development within the District that is makai of Ala Moana Boulevard and extends between Kewalo Basin and the Foreign Trade Zone.

**Q. *It seems as though in the past year, there have been numerous boats stranded on reefs, breaking up and damaging the coral reefs and the environment. The reports I have seen on the news show that the State cannot do anything because of liability issues. Has there been any changes to help the State respond faster?***

**A.** Yes. The current law does not allow the Department of Land and Natural Resources to take quick action to remove vessels grounded on coral reefs or in imminent danger of breaking up. Wind, and even one tidal cycle, can drive a boat hard aground and compound both the costs of removal and damage to the environment. Thus, to preserve our precious resources, the

Legislature passed **SB2360, SD2, HD1, CD1**, which protects natural and biological resources from sustaining damage when vessels run aground by providing for the immediate removal of vessels grounded on state submerged lands, shorelines, and coral reefs. This measure allows the Department of Land and Natural Resources to take control of a vessel grounded on a coral reef or in imminent danger of breaking up, take control of a vessel that cannot be immediately removed by the owner in a reasonably safe manner, and take legal action to collect any costs or expenses incurred for the removal of any grounded vessel. It also provides immunity from liability to Department of Land and Natural Resources and persons assisting the department in removing vessels grounded on a coral reef or in imminent danger of breaking up.

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## LEGISLATIVE ACTION BRIEF

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### LANGUAGE ACCESS

- Q. *Substantial numbers of people who live, work, and pay taxes in this State are unable to communicate effectively with their government, either because they do not speak or write English, or because their primary language is not English. Likewise, employees of state and local government agencies are often unable to communicate with these individuals who require their services. Consequently, a significant portion of our population is essentially denied the rights and benefits which they would otherwise receive. Will this situation change?***
- A.** The Legislature enacted **HB2778, HD2, SD2, CD1** to require the State and covered entities to provide assistance to limited English proficient persons who are eligible for certain state-provided or state-funded programs. This measure: (1) requires the State and covered entities that render services on behalf of the State to ensure meaningful access to services by providing oral and written language services to limited English proficient persons; (2) establishes a Language Access Director position and provides duties and responsibilities; (3) establishes a Language Access Advisory Council (Advisory Council) to advise the Language Access Director; and (4) appropriates general revenues of \$440,000 to staff and maintain positions for the office of the Language Access Director and Advisory Council. "Covered entity" includes persons receiving state financial assistance, including grants or other arrangements by which services are rendered on behalf of the State.
- Q. *Why is language access in Hawaii so important?***
- A.** Persons who do not speak English as a primary language comprise a significant portion of Hawaii's population. Many of these individuals contribute to our economy, educate their children in our schools, and make valuable contributions to the life of our state. However, many individuals with limited English proficiency sometimes have difficulty obtaining services from state agencies because of their limited ability with the English language. The State must strive to ensure that all residents of Hawaii, including non-English speakers and limited-English speakers, enjoy full access to and participation in the life of our community.
- Q. *What are the ramifications to society of English language barriers to communication?***
- A.** Most individuals living in Hawaii read, write, speak, and understand English. However, there are many individuals who are limited in English proficiency. The English language for persons who are limited in English proficiency can pose a barrier to: (1) accessing important benefits and services; (2) understanding and exercising important rights; (3) complying with applicable legal obligations; and (4) understanding information state funded programs and activities.
- Q. *How far do State agencies and covered entities have to go to provide language access?***
- A.** This measure requires them to take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons; provision of competent, timely oral

language services to limited English proficient persons who seek to access services, programs, or activities; provision of written translation of vital documents to limited English proficient persons who seek to access services, programs, or activities under certain circumstances; and establishment of a plan for language access.

**Q. *What is the role of federal law in providing language access?***

- A.** This measure puts the State in compliance with Presidential Executive Order 13166, which requires federal agencies to develop and implement a system of enabling limited English proficiency persons to meaningfully access public services. In turn, federal agencies, through specifically-tailored guidance for state administration of programs relating to federal financial assistance, must ensure that recipient states provide meaningful access to population of persons with limited English proficiency (LEP). States are required to take reasonable steps to ensure reasonable access to their programs and activities by LEP persons. Federal Executive Order No. 13166 affirmed that Title VI of the Civil Rights Act of 1964 required federally funded programs to provide language-accessible services.



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## LEGISLATIVE ACTION BRIEF

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### LONG-TERM CARE

**Q. *As Hawaii's population continues to age, the number of older residents in Hawaii increases. Did the Legislature do anything to address the looming shortage of long-term care for these residents?***

**A.** The Legislature approved two measures that recognize the need for strategic planning to address the long-term health care needs of Hawaii's older residents. One establishes a joint legislative committee on family caregiving to develop comprehensive public policy to strengthen support for family caregivers who provide informal assistance to persons age 60 or older with physical or cognitive disabilities. **(SB3253, SD1, HD1, CD1)** The Legislature also appropriated funds to support Hawaii's older residents through coordination of a statewide system of caregiver support services and expansion of the Department of Health, Executive Office on Aging Kupuna Care Services Program. **(SB3252, SD2, HD1, CD1)**

The Legislature also passed a measure that increases the level of care payments for Type I and Type II residential community care facilities that provide nursing home level of care to elderly and disabled Hawaii residents. For Type I homes, the payment was increased to \$621.90 and for Type II facilities, the payment was increased to \$729.90. **(HB1821, HD2, SD2, CD1)**

**Q. *What is long-term care?***

**A.** Long-term care covers a range of support services coordinated to meet the needs of people of all ages with disabilities and senior citizens. The Department of Human Services has several home- and community-based programs. These programs provide alternatives to nursing homes through support services that enable eligible people to remain in their own homes or facilities for them to live in a community-based setting such as a small group home.

**Q. *What is the Kupuna Care Services Program?***

**A.** The Kupuna Care Services Program is a service of the Department of Health, Executive Office on Aging. Kupuna Care provides support services to Hawaii's older residents who cannot live at home without adequate help from family and/or formal services. It is designed to assist, rather than totally support, elderly folks to remain in their homes as long as possible. Kupuna Care is aimed at older adults having difficulty in performing two or more functions of daily living. Services are intended to help older adults live independently and safely, while remaining healthy for as long as possible.

**Q. *Where can I get more information about Kupuna Care?***

**A.** Contact the Area Agency on Aging nearest to you for additional information about Kupuna Care and other services for Hawaii's frail elders.



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## LEGISLATIVE ACTION BRIEF

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### MILITARY AFFAIRS

**Q. *What was done this session to protect the health of service members?***

- A.** Depleted uranium munitions have been used extensively in the 1991 Gulf War and during the three years since the 2003 invasion of Iraq. The chemical and radiological toxicity of depleted uranium has been a reported cause of a number of serious medical conditions among military personnel who have returned from designated combat zones where depleted uranium munitions have been used. In January 2006, the Honolulu Advertiser reported the Army's confirmation of finding remnants of depleted uranium munitions on Oahu. For National Guard members returning from a combat zone who may have been exposed to depleted uranium, **SR21, SD1** requests that the Department of Veterans Affairs and the Adjutant General assist any member and that member's dependents in obtaining a health screening, and ensure that treatment is available to those who are found to have suffered exposure.

Further, **SR92** urges the U.S. Congress to authorize and appropriate funds to allow all members of the military reserve components to access TRICARE health benefit coverage on a cost-share basis without restrictions.

**Q. *Was anything passed to assist service members returning from deployment?***

- A.** It is extremely difficult for deployed members of the armed forces to keep current the demands of their civilian lives at home in Hawaii. In recognition of this fact, the Legislature passed **HB1809, HD2, SD2, CD1**, which allows members of the U.S. Armed Forces who are on active service away from Hawaii at the time their Hawaii driver's licenses expire to renew them within ninety days of either their return to Hawaii or discharge from the hospital.

**Q. *What about for service members who are also students?***

- A.** For all members of the military who are also students in the University of Hawaii (UH) system, **SB1648, SD1, HD2, CD1** was passed to allow the tuition and fees charged to members of the Hawaii National Guard and the federal reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard to be set at the same levels as those charged to state residents. This measure should assist all military members who wish to complete degrees in the UH system.

**Q. *What about for service member retirement?***

- A.** The Legislature passed **HCR48, HD1**, which urges the federal government to allow National Guard members and military reservists who serve satisfactorily for twenty or more years to retire with full retirement benefits beginning at age fifty-five.

**Q.     *Was anything done this session to support Hawaii veterans?***

**A.**     The Legislature recognizes that it is essential for Hawaii's military veterans and their families to have a reliable and effective method of communicating important information. Without the current Office of Veterans' Services (OVS) quarterly newsletter, veterans from all branches of the military would lack important information regarding available outreach services, upcoming veteran-related events in the community, and the dates of various military ceremonies for veterans and their families. In June 2006, OVS would have depleted its newsletter funding. To avoid cessation of the newsletter, the Legislature passed **SB1648, SD1, HD2, CD1**, to appropriate \$50,000 to OVS so that Hawaii veterans may keep abreast of relevant information and events.

It is now known that between 1962 and 1974, the Department of Defense carried out the chemical and biological warfare testing projects known as Project 112 and the Shipboard Hazard and Defense Project, or Project SHAD. The Department of Defense acknowledges that fifty warfare tests were executed, with nineteen conducted at sea primarily in the South Pacific and off the coast of Hawaii, and thirty-one on land in Hawaii, the Panama Canal Zone, and Alaska. Although some public awareness about the tests has grown, much information remains unknown. In an effort to fully understand the extent of these tests and to provide exposed veterans with proper medical care, United States Representatives Mike Thompson and Denny Rehberg have introduced the Veterans' Right to Know Act, H.R. 4259. In support of the Veterans' Right to Know Act, the Hawaii State Legislature passed **SR114**, requesting that the U.S. House of Representatives support and pass the measure to create a commission to bring relief to veterans who were involved in incidents of military chemical or biological testing.

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## LEGISLATIVE ACTION BRIEF

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### OCCUPATIONAL LICENSING

**Q. *The money transmitter industry has boomed in recent years with potentially hundreds of millions of dollars transmitted out of this State each year. Did the Legislature take any action to regulate this industry in order to protect consumers?***

**A.** Yes, this session the Legislature passed a bill creating a new licensure system to regulate the money transmitter industry in Hawaii. **SB2143, SD2, HD1, CD1** requires a person engaged in the business of money transmission to register with the Commissioner of Financial Institutions and apply for a license. Once licensed, money transmitters are required to maintain certain records to be made available for inspection by the Commissioner and to file written reports with the Commissioner for events that impact their activities in the State. These events include, in part, filing of bankruptcy or reorganization by the money transmitter, felony indictments or convictions of the transmitter or any of its key officers or directors, and any reports as required by federal and state law related to money laundering.

Money transmitters are also permitted to conduct activities through authorized delegates pursuant to written contracts. Under this bill, every transmitter and its authorized delegates must transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, and provide a consumer with a receipt of the value transmitted and the fees charged.

**Q. *When do money transmitters have to begin complying with the new licensure system?***

**A.** Money transmitters are required to comply with the new licensure system by July 1, 2007, but may comply sooner. If a money transmitter completes an application on or before July 1, 2007, the transmitter is presumptively in compliance with the new licensure system.

**Q. *Electricians and plumbers are critical to the construction and building industry. Licensure of these professionals ensures that consumers have qualified persons to complete the necessary electrical and plumbing work. Did the Legislature pass any measures that affect the licensing of electricians and plumbers?***

**A.** Yes, the Legislature passed two bills that affect the licensing of electricians and plumbers. **SB2298, SD1, HD1, CD1** prohibits a person from advertising or holding the person's self out as an electrician or plumber without a license. If a court finds that an unlicensed person has advertised in violation of this provision, the entity furnishing voice communication services to the violator shall disconnect the telephone number contained in the advertisement.

This bill also amends provisions related to suspension, revocation, or denial of issuance or renewal of a license by adding the following as grounds for suspension or revocation of a license, imposition of fines, or denial of the issuance or renewal of any license: (1) aiding or abetting an unlicensed person to violate the licensure provisions; (2) allowing a person's license to be used by an unlicensed person; and (3) acting as an agent, partner, or associate of an unlicensed person engaging in an activity in violation of the licensure provisions. This bill also increases the

fine for any person who violates the licensure provisions from a minimum of \$1,000 to a maximum of \$5,000 for each violation.

Another bill, **SB2913, SD1, HD1**, amends provisions relating to the licensing of craftsmen and applies these provisions to the licensing of electrical or plumbing workers. This bill requires that at least half of all individuals performing electrical or plumbing work employed on a construction job site by an electrical or plumbing contractor be licensed. As a safeguard, this bill authorizes the Contractors License Board to waive this requirement in any county where there are an insufficient number of licensed electricians or plumbers.

**Q. *A variety of professions and vocations are regulated through state licensure systems. Often licensees do not actively engage in their licensed profession or vocation, but would like to maintain some form of their license with the licensing authority. Did the Legislature enact any bills that would allow licensees to acquire and maintain their licenses although they are not actively engaged in their profession or vocation?***

**A.** Yes, the Legislature passed a bill authorizing licensing authorities, unless otherwise provided by law, to allow licensees to apply and obtain inactive status if they are not actively practicing in their profession or vocation. **HB2331 (Act 49)** allows licensees to reactivate their licenses at any time during the licensure period or at the time of renewal. The bill also permits the licensing authority to deny an application for reactivation if the licensee does not meet certain requirements.

**Q. *Children depend on timely payments of support agreements entered into by parents with the Child Support Enforcement Agency (CSEA). Did the Legislature take any action to ensure timely payments from those who might hold professional or vocational licenses in this State?***

**A.** Yes, **HB2287, HD1 (Act 43)** authorizes the CSEA to suspend or deny the license or the license's renewal, reinstatement, or restoration of an individual who has failed to make payments after entering into an agreement to pay support. This Act replaces the former process where the CSEA had to reinitiate the entire license suspension process upon an individual's failure to make payments pursuant to the agreement. This Act will save time and allow more prompt action by the CSEA.

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## LEGISLATIVE ACTION BRIEF

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### PARKING CITATIONS AFFECTING VEHICLE TRANSFERS

- Q. *Used car buyers were faced with the insurmountable problem of being unable to have the title and registration of the vehicle transferred to their name because the previous owner had unpaid traffic fines tagged to the vehicle. Can used car owners now have the transfer effectuated?***
- A.** Yes. The Legislature enacted **SB2065, SD2, HD1, CD1** to provide that unpaid parking fines and judgments do not prevent the transfer of a motor vehicle's registration and title by a registered owner of a motor vehicle who was previously issued a certificate of registration and certificate of ownership for the motor vehicle.
- Q. *What was the problem with the existing law?***
- A.** The statute (section 291D-10, HRS) was enacted in 1993 as part of a comprehensive new law on the administrative adjudication of traffic offenses. That law provided that if the owner of the vehicle incurred a parking citation, the court was required to prevent the issuance or renewal of the motor vehicle's certificate of registration and transfer of title until the traffic citations were paid or otherwise disposed. While the intent was to force owners to pay their citations, in certain circumstances, it worked an extreme hardship on a subsequent owner who paid for and took possession of a car, but was then unable to register the car in his or her name. To prevent this catastrophe, the courts would issue a "temporary clearance" to permit the transfer if the new owner told the clerk that the tickets were issued against the vehicle while it belonged to the previous owner. However, this practice was suddenly halted in the summer of 2005 when it was discovered that the temporary clearances were not provided for in the law. The old law, that the parking citation attached to the vehicle rather than the owner, was then reinstated.
- Q. *How does the new law change things?***
- A.** The clerk of the court is now required to issue a clearance to effectuate the registration and transfer of title, which is what the informal administrative practice of issuing a temporary clearance sought to do. However, the clearance does not: (1) absolve the registered owner of the motor vehicle at the time the parking violation was incurred from paying the fine; (2) prevent any subsequent issuance or renewal of the motor vehicle's certificate of registration and transfer of title to the motor vehicle; or (3) otherwise encumber the title of that motor vehicle. The new owner thus is able to become the legal owner while the prior owner is still liable for the citations.
- Q. *Does the new law apply to vehicles affected prior to the effective date of the Act?***
- A.** Yes. The new law applies retroactively to vehicles that have been prevented from being transferred prior to the effective date of the Act by reason of the old law.





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## LEGISLATIVE ACTION BRIEF

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### PHARMACY BENEFITS

**Q. *I've heard there is a State Pharmacy Assistance Program; what does it do?***

**A.** Beginning January 1, 2006, low-income seniors and disabled individuals who had received prescription drug benefits through Medicaid began to receive their prescription drugs through Medicare. Under Medicaid, these individuals did not have co-payments for their prescription drugs but a copayment is required for Medicare. The State Pharmacy Assistance Program pays the co-payments now required under the federal Medicare Part D prescription drug plan for eligible individuals.

**Q. *Who is eligible for this program?***

**A.** The program is available to Hawaii residents who are sixty-five or older, or are disabled and receiving a social security benefit, if they meet the income and asset criteria and are not ineligible for other reasons. Individuals who are members of a retirement plan and who are receiving a benefit from the Medicare Modernization Act are not eligible for the program. An individual also is excluded from the program if he or she is enrolled in another public assistance program that provides pharmaceutical benefits, other than the Medicare Modernization Act and Medicaid, as long as the individual receives pharmaceutical benefits from the other public assistance program, unless the person is eligible for Medicare. Individuals who are enrolled in a private sector plan or insurance that provides payments for prescription drugs also are excluded.

Residents who qualify for or are enrolled in the Hawaii Rx Plus Program are eligible for the program if they meet all of the other State Pharmacy Assistance Program requirements.

**Q. *Did the Legislature do anything to increase the number of people eligible for benefits under the State Pharmacy Assistance Program?***

**A.** The Legislature expanded eligibility for the program by increasing the household income limitation from 100% to 150% of the federal poverty level by passing **SB3003, SD2, HD2, CD1**. It also extended eligibility to State Pharmacy Assistance Program applicants enrolled in another public assistance program that provides pharmacy benefits to include Medicaid recipients.



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## LEGISLATIVE ACTION BRIEF

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### PUBLIC HEALTH INITIATIVES

- Q. *Recent studies have shown that smoking is known to be a leading cause, and the most preventable cause, of cancer in the nation and that those exposed to secondhand smoke have heightened health risks. How did the Legislature address this issue during this past session?***
- A.** It is well documented that tobacco use is responsible for over 1,100 deaths annually in Hawaii and costs the State over \$525,000,000 in health care and other associated costs per year. The Legislature addressed these issues by passing two measures, **SB3262, SD1, HD1, CD1**, the "Clean Air Bill," which ensures a consistent level of protection statewide from second-hand smoke and **SB2961, SD1, HD1, CD1**, which increases the tax on cigarettes.
- Q. *What is the "Clean Air Bill" and how does it change existing law in Hawaii?***
- A.** The "Clean Air Bill" protects the public health from the dangers of second-hand smoke. Counties in Hawaii have adopted ordinances that offer varying levels of protection to workers and the public against secondhand smoke. The "Clean Air Bill" changes this by ensuring consistent smoking rules throughout the State by requiring all counties to prohibit smoking in places of employment and public places, including all restaurants and bars, all enclosed or partially enclosed areas of shopping malls, all enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums, and amphitheaters, educational facilities, health care facilities, retail stores, and airports from "curb to cabin."
- Q. *How does the "Clean Air Bill" further the goals of the public health initiatives?***
- A.** In 2004, the Centers for Disease Control and Prevention issued an advisory to persons with heart disease to avoid indoor settings where smoking is allowed. Furthermore, recent studies have shown that second-hand smoke causes heart disease, stroke, respiratory disease, and lung cancer in healthy nonsmokers, which warrants increased protections in the workplace and for the public in general. In addition to having a healthier environment that everyone can enjoy, protecting the public from the effects of secondhand smoke also will help to reduce health care costs, reduce lost productivity and time from work, and encourage smokers to quit.
- Q. *How will this law be enforced and what are the penalties for people who violate it?***
- A.** An authorized police officer may arrest a person who smokes in an area where smoking is prohibited and will take the name and address of the alleged violator and issue the violator a summons or citation in writing. A person guilty of a violation can be fined up to \$50. A police officer or other appropriate state or county officer may also eject a smoker from the premises if he or she continues to smoke after being cited.

**Q. Will owners and managers be penalized for allowing people to smoke in their establishments?**

**A.** Owners, managers, or people who otherwise control any place or facility where smoking is prohibited by the provisions of the "Clean Air Bill" will be guilty of a violation and will be fined up to \$100 for the first violation, up to \$200 for the second violation that is within one year of the date of the first violation, and up to \$500 for each additional violation within one year of the date of the preceding violation. Additionally, a violation may result in the suspension or revocation of any permit or license issued to the person or the place for the premises on which the violation occurred.

**Q. What else does the bill do to discourage smoking?**

**A.** The bill allows the counties to adopt anti-smoking ordinances that are at least as protective of the rights of nonsmokers as the Clean Air Bill. It also prohibits cigarette sales from vending machines in areas accessible to those under age 18 and from lunch wagons doing business within 1,000 feet of an elementary or secondary school, to help prevent cigarette sales to minors. It also restricts distribution of sample cigarette or tobacco products, coupons, and promotional materials within 1,000 feet of such schools.

**Q. When will the "Clean Air Bill" go into effect?**

**A.** If the bill becomes law it will become effective on November 16, 2006 which is the anniversary of The Great American Smokeout, an annual November event sponsored by the American Cancer Society to help smokers quit cigarettes for at least one day, in the hope that they will quit forever.

**Q. SB2961 increases the tax on cigarettes. How does this tax increase further the goals of the public health initiatives?**

**A.** One of the goals of this public health initiative is to encourage our community members to adopt healthier lifestyles. Increasing the tax on cigarettes is an effective deterrent to smoking, especially for young people, and an incentive for users to quit.

**Q. How much is the tax increase?**

**A.** This bill increases the tobacco tax by 1 cent per cigarette per year for the next six years, for a total increase of 6 cents.

**Q. How are the additional revenues from the tax increase going to be spent?**

**A.** This bill allocates the additional tax to fund the Hawaii cancer research center, the trauma care system, community health centers, and emergency medical services, all of which are effective sources for the prevention and treatment of disease and injury. The bill also creates the Hawaii cancer research special fund and the community health centers special fund as depositories for designated portions of the cigarette tax revenues.

**Q.     *What is the trauma system special fund and why is it needed?***

**A.     HB3142, HD2, SD2, CD1** establishes the trauma system special fund to ensure the availability of care for trauma patients in the State. The Hawaii trauma care system is in a state of crisis due to the lack of adequate funding. The costs for providing trauma care to patients are much higher than the payments that providers are receiving. HB3142 requires the Department of Health to use the monies from the special fund to support the continuing development of a comprehensive state trauma care system. The trauma system special fund will provide supplemental financial support to the trauma system as a whole and help to provide a critical and necessary public service.



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## LEGISLATIVE ACTION BRIEF

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### STREAMLINED SALES TAX PROJECT

**Q. *What is the Streamlined Sales Tax Project?***

- A.** The National Streamlined Sales Tax Project (SSTP) is an effort by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The goals of the Project include tax law simplification, more efficient administrative procedures, and implementing emerging technologies to substantially reduce the burden of tax collection. The proposals of the Project focus on improving sales and use tax administration systems for both local businesses and remote sellers of all types of commerce, including fast-growing internet sales.

The Project proposes that states change their sales and use tax to conform to the simplifications as proposed by the Project; thus, the simplifications would apply to all sellers. Sellers who do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress chooses to require collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications. Registration by sellers to voluntarily collect sales and use taxes will not infer that the business must pay business activity taxes, such as the corporate franchise or income tax.

States can participate in the Streamlined Sales and Use Tax Agreement, which facilitates the collection of pre-existing sales (or in the case of Hawaii, general excise and use) taxes in an efficient manner by making it easier for businesses that are responsible for assessing and collecting sales, general excise, or use tax to do so via electronic means. Collecting these taxes in an efficient manner will assist in the equitable dispersal of general excise and use tax liability within the State so persons who do not shop online will not have to pay an inordinate share of such taxes.

**Q. *Hawaii doesn't have a sales tax, so why should we get involved with this project?***

- A.** Instead of a sales tax, which is imposed on the person purchasing goods, Hawaii has a general excise tax, which is imposed on the person selling goods or services. Many sellers pass the general excise tax on to the buyer, so it seems like a sales tax. Hawaii also has a use tax, which is similar to the excise tax as it also is imposed on the seller and not the buyer, but is applicable to sellers who are located outside the State. For instance, when a Hawaii resident buys books on line at amazon.com, a use tax is supposed to be paid, but in reality it usually is not. Regardless of whether a state imposes a sales tax or a general excise tax, the fact is that both types of states are missing out on collecting the use taxes from out of state sellers with no physical location in the State, and joining the SSTP will allow Hawaii and the other states to receive taxes that should be theirs.

**Q. *Why is electronic-based commerce a major focal point for the Streamlined Sales Tax Project?***

- A.** Unless a consumer lives in the same state an electronic-based commerce site is based, that consumer does not need to pay a sales or general excise tax; thus making shopping via the

Internet an attractive option. Technically, if a sales or general excise tax is not collected, the consumer is supposed to pay a use tax, but that rarely happens. Thus, if a Hawaii customer buys items from the Target website, that customer will not need to pay the excise tax because Target does not have a store in Hawaii, but under chapter 238, a use tax should be paid. This is rarely done. States are complaining that they are losing billions of dollars a year in revenue as a result of this, and the Streamlined Sales Tax Project will help states gain back this lost revenue. The Project proposes that the taxing jurisdiction that applies to the sale is the one where the goods are delivered – not where the seller is located, and not the address of the credit card holder.

**Q. *How can Hawaii become a member of the Streamlined Sales and Use Tax Agreement?***

- A.** The Project requires two legislative components to accomplish the Project's goals. First, states will need to adopt enabling legislation to allow the state to enter into an agreement with one or more states to simplify the sales and use tax administration to reduce the burden of tax compliance for all sellers and all types of commerce. Second, the states will need to amend or modify their sales and use tax laws to achieve the simplifications and uniformity required to allow the participating states working together.

In 2003, the Legislature enacted the Hawaii Simplified Sales and Use Tax Administration Act to have Hawaii become a participating member of the SSTP. The Act essentially directed the Department of Taxation to enter into Streamlined Sales and Use Tax Agreements with other states to simplify and modernize the administration of sales and use taxes. The modernization included, among other things, a system to prevent the widespread nonpayment of sales and use taxes owed from out-of-state retail transactions. This session, the Senate passed **HB2419, HD1, SD3, CD1**, which did not pass the Legislature because the House failed to pass it. The provisions of this measure would have amended Hawaii's tax law to conform to the Streamlined Sales and Use Tax Agreement.

**Q. *Why does Hawaii need to participate in streamlined sales and use tax agreements with other states?***

- A.** In 2003, Hawaii lost approximately \$112,000,000 to \$117,000,000 in state and local revenues due to the State's inability to capture tax revenues from electronic-based commerce transactions. The National Conference of State Legislatures estimates that by 2008, Hawaii could lose between \$157,000,000 to \$245,500,000 if the State does not participate in the SSTP. Hawaii stands to be one of the top ten states that will lose the most tax revenues from electronic-based commerce transactions.

**Q. *What were the tax amendments in HB2419, HD1, SD3, CD1?***

- A.** Had HB2419 passed the Legislature, the provisions would have amended the tax laws in the Hawaii Revised Statutes by: (1) moving the 0.5 percent tax rate for wholesale transactions to a new chapter, (2) adding a new chapter on the taxation of imports of property, services, and contracting, (3) moving the 0.15 percent tax on insurance producers to a new chapter, (4) eliminating the tax on businesses owned by disabled persons, and (5) providing destination-based sourcing and amnesty.



**Q. As Hawaii currently does not have a sales tax, will the State need to adopt a whole new tax to become a member of the Streamlined Sales and Use Tax Agreement? Will it add more complexity to the State's current tax system?**

**A.** No. If HB2419 passed, the implementation of the Streamlined Sales and Use Tax Agreement should have been fairly simple because Hawaii's general excise and use taxes are statewide taxes and the counties do not currently assess additional regional sales taxes. The creation of three new tax chapters under HB2419 would have made tax compliance simpler for taxpayers because the different tax rates (4%, 0.5%, and 0.15%) would have been in different chapters, instead of all combined into one, as it currently exists. The taxes imposed on transactions (other than those subject to the county surcharge) will remain unchanged; thus, the amendments under HB2419 do not establish a new tax and do not add more complexity to the State's existing tax system.

**Q. How will Hawaii's share of sales tax revenue be calculated?**

**A.** Under the Streamlined Sales and Use Tax Agreement, tax revenues would be destination-based, so if the buyer has a Hawaii zip code, the buyer pays Hawaii's current general excise tax or use tax and the seller is responsible for transmitting that tax to the State.

**Q. Would the terms of the agreement become a burden on the business community, if Hawaii becomes a member of the Streamlined Sales and Use Tax Agreement? Amendments in HB2419 would have required that goods are taxed at a combined state and county rate where the goods are delivered, and services are taxed at the rate of "place of first use." Thus, companies such as Big Island Candies will be required to pay 4.5% tax on sales to Oahu.**

**A.** Before the county surcharge goes into effect, the Department of Taxation must promulgate rules or provide guidance to companies like Big Island Candies and other businesses about the taxation of inter-island sales anyway. HB2419 would not have had an impact on this because the 0.5% surcharge is already set to take effect January 1, 2007.

The sourcing rules in HB2419 would have provided a framework for taxing inter-island sales. Under the Streamlined Sales and Use Tax Agreement, sales of inter-island goods are taxed where shipped, so Big Island Candies will be taxed on good sold and shipped to Oahu. This destination sourcing rule is also consistent with goods sold and shipped out of state.

**Q. Is it true that the State will be unable to adopt rules for inter-island transactions that differ from the rules mandated by the Streamlines Sales and Use Tax Agreement?**

**A.** Yes, but the Streamlined Sales and Use Tax Agreement makes a policy decision on inter-island sales that the Department of Taxation will need to make for the 0.5% surcharge in any event.

**Q. Why should Hawaii become a member of the Streamlined Sales Tax Project?**

**A.** The tax rates and the tax base that exists under HB2419 currently exists under state law; thus no new taxes are formed. Instead, becoming a member of the Streamlined Sales and Use Tax Agreement will allow Hawaii to have a more uniform way of administering its tax system and gain more revenue that is lost to electronic-based commerce transactions. Furthermore, it is important

to note that it is voluntary for sellers to register with the SSTP. Over four hundred businesses have registered and more businesses are expected to register in the future due to the SSTP facilitating the collection of taxes in each state. The SSTP recently procured the services of certified service providers to assist in the collection of taxes by businesses that voluntarily choose to register with the Streamlined Sales and Use Tax Agreement.

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## LEGISLATIVE ACTION BRIEF

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### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

**Q. *During the 2005 regular legislative session, the Legislature passed legislation requiring oversight of federal Temporary Assistance for Needy Families (TANF) funds (Act 165, Session Laws of Hawaii 2005). What is the status of legislative oversight of TANF funds?***

**A.** The Legislature will continue its oversight of the use of funds received through the TANF block grant in order to promote accountability and openness in government and to ensure the appropriate use of TANF funds.

**Q. *Why do we need legislative oversight of TANF funds?***

**A.** In the past, the administration has been criticized for using TANF funds for an anti-drug media campaign and to replace state money that was cut from state cultural and arts programs. By requiring a legislative appropriation before the Department of Human Services expends TANF funds, the Legislature can ensure that TANF funds are spent appropriately. The Legislature passed a measure to promote accountability and openness in government by requiring TANF program funds to be expended by legislative appropriation and by requiring the Department to apprise the Legislature of the effectiveness of prior expenditures of TANF funds and whether the desired program outcomes were achieved (**HB2258, HD1, SD2, CD1**). Legislative oversight of TANF funds expenditures will help to ensure that TANF funds are spent appropriately according to federal guidelines.

**Q. *What are appropriate uses of TANF funds?***

**A.** Federal law dictates how states may use funds received pursuant to the TANF block grant. TANF block grant funds can be used to provide financial aid to needy families, to promote self-sufficiency through job training, to encourage two-parent families, and to prevent non-marital pregnancies. States also may transfer up to thirty percent of TANF funds to the child care development block grant and to the access to jobs program, and may transfer up to ten percent to the social services block grant.

In order to maintain maximum flexibility on the use of TANF funds, states must obligate the money for expenditure in the federal fiscal year. If a state fails to obligate funds by October 1 each year, it loses flexibility on spending those funds under federal law, and must spend the remaining TANF funds on ongoing assistance such as cash, food, and housing rather than for other approved purposes. Legislative oversight will help to ensure that this does not happen.

**Q. *Who will decide how TANF funds are spent?***

**A.** The Department of Human Services will continue to determine how TANF funds are spent. In early 2006, the Department commenced a statewide TANF Strategic Planning process. However, **HB2258** requires the Department to submit a plan prior to the convening of each regular legislative session that details how funds received under the TANF program will be spent

and describes the desired program outcomes. The plan is to be developed in consultation with TANF heads of household and other community members familiar with such families' situations and needs. The annual reports will ensure that the Legislature is informed of how TANF funds are expended and what the intended objectives are, and that the Legislature is updated annually regarding the effectiveness and level of success in achieving the intended outcomes.

**Q. *What happens if additional TANF funds become available when the Legislature is not in session to make an appropriation?***

**A.** For periods when the Legislature is not in session, **HB2258** authorizes the Department of Human Services to receive and disburse federal funds related to the TANF program that are supplemental to the TANF block grant, or that are obtained competitively under the TANF program, subject to the approval of the Governor. It also requires the Department to report to the Legislature any TANF funds received and expended during the interim, the purpose of any expenditures, and the outcomes achieved.

**Q. *Will the federal TANF reauthorization that was signed in February 2006 impact Hawaii?***

**A.** The federal Deficit Reduction Act of 2005 is the legislation that reauthorized welfare reform, including the TANF program. The law strengthens the work participation requirement for the states by revising the method by which a state's caseload reduction credit is calculated. This results in a heightened work participation requirement for Hawaii. In order to avoid financial penalty, the State must ensure adequate work participation by TANF recipients. As the federal government promulgates regulations governing the newly-enacted legislation, there also may be other effects from the TANF reauthorization. In early 2006, the Department convened a statewide TANF strategic planning process to identify and consider the ramifications of changes in the TANF reauthorization statute. **HB2258** requires the Department to continue the strategic planning process and to continue to include the community and affected stakeholders in the process.

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## LEGISLATIVE ACTION BRIEF

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### TOURISM

- Q. *The popularity of activities on farms that attract tourists, commonly called agricultural tourism, has increased. Various types of diversified agriculture are unique to Hawaii, such as macadamia nuts, coffee, sugar, honey, and flowers. Agricultural tourism is a natural marriage between traditional farming activities, which help build the island's economies, and the tourism sector that drives the state economy. The problem has been the lack of definition, regulation, and consistency among the counties. Was this issue addressed by the Legislature?***
- A.** Agricultural tourism gained statutory recognition in the 2006 Session (**HB2145, HD2, SD1, CD1**). The measure essentially allows agricultural tourism as a permissible use within agricultural districts, but requires each county to enact ordinances to allow such use.
- Q. *What is the definition of "agricultural tourism"?***
- A.** Agricultural tourism is an activity conducted on a working farm, or a farming operation for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations.
- Q. *Why has agricultural tourism become so important to farmers?***
- A.** Agricultural tourism is a means for bona fide farmers to supplement their incomes from farm activity. However, this measure addresses the broader issue of farms in general particularly in relation to tourism. Farmers at least should have the opportunity and the option to engage in agricultural tourism to complement their farm operations. Many current agri-tourism operations are more tourism than agriculture, due to current land use law that is silent on whether agricultural tourism is a permissible use of agricultural land. Agricultural tourism is a unique product in Hawaii with its diverse agriculture that appeals to many visitors.
- Q. *What sort of ordinances does a county have to enact to permit agricultural tourism?***
- A.** To provide for agricultural tourism, each county must adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined by current Hawaii law. Agricultural tourism activities are not permissible in the absence of a bona fide farming operation. The ordinances must include: (1) requirements for access to a farm, including road width, road surface, and parking; (2) requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; provided that overnight accommodations shall not be permitted; (3) activities that may be offered by the farming operation for visitors; (4) days and hours of operation; and (5) automatic termination of this use upon the cessation of the farming operation.

**Q.     *Is an environmental assessment required of an agricultural tourism activity?***

**A.**     Each county may require an environmental assessment.

**Q.     *Are overnight accommodations permitted as part of an agricultural tourism activity?***

**A.**     No. Such arrangements are specifically prohibited.

**Q.     *What are some ancillary economic benefits to agricultural tourism?***

**A.**     These activities educate consumers about the agricultural goods they buy, help farmers learn what consumers want, and create jobs for trained guides and salespeople.

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## LEGISLATIVE ACTION BRIEF

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### UNEMPLOYMENT BENEFITS

**Q.** *I heard that the unemployment compensation fund has a huge surplus. Did the Legislature do anything to give the money back to businesses or help others?*

**A.** Federal law does not allow money in the Unemployment Compensation Fund to be disbursed for anything other than for benefits for unemployed workers. However, understanding that Hawaii is experiencing a very low unemployment rate and given the large surplus of the unemployment fund, the Legislature has provided employers with tax relief for the next two calendar years. **SB2190, SD1, HD2, CD1**, gives employers a cut in the payroll taxes that the employer is responsible for paying towards unemployment benefits.

**Q.** *So the Legislature helped out businesses, but were unemployed workers given any help?*

**A.** **SB2190, SD1, HD2, CD1**, also provided increased benefits to eligible unemployed individuals. The Legislature recognized that benefits for unemployed individuals have remained largely unchanged over the past several years. Under this measure, the maximum benefit an eligible unemployed individual is able to receive was increased from 26 to 30 times the individual's maximum weekly benefit amount and an eligible unemployed individual's maximum weekly benefit was also increased from 70% to 80% of the average weekly wage. Also, to encourage, rather than discourage, unemployed individuals from seeking supplemental income, the threshold for deducting wages earned in a benefit week was increased from \$50 to \$150.

**Q.** *Were any other changes made to benefit unemployed individuals?*

**A.** The law was also changed to specify when an unemployed individual could be denied unemployment benefits due to termination from employment for misconduct. Under **SB2190, SD1, HD2, CD1**, only individuals who have been terminated from employment due to willful or wanton misconduct can be denied unemployment benefits. This clarification protects unemployed individuals who have not committed willful and wanton misconduct and also protects and preserves the integrity of the employment security law system.





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### UNIVERSITY SCHOLARSHIP PROGRAMS

- Q. *According to the National Center for Public Policy and Higher Education, net college costs for low- and middle-income students to attend Hawaii's public four-year colleges and universities represent a third of their families' annual income. In 2004, this national non-profit independent organization gave Hawaii a "D" for affordability. The organization also noted that "over the past few years, Hawaii has had among the steepest declines in the nation in the percentage of first-time, full-time college students earning their bachelor's degree within six years of enrolling in college." What did the Legislature do this session to address this problem?***
- A.** The Legislature passed a bill this session (**SB3120, SD2, HD1, CD1**) that establishes the Hawaii State Scholars Program to provide financial assistance to University of Hawaii students. The bill also establishes the Workforce Development Scholarship Program to provide financial assistance to qualified Community College students.
- Q. *What does the Hawaii State Scholars Program allow the University of Hawaii to do?***
- A.** It allows the University of Hawaii to provide financial assistance in the form of scholarships for up to four years to any qualified student enrolled at any campus of the University with the possibility of renewal for a fifth year in exceptional circumstances.
- Q. *What are the requirements to receive scholarship assistance under this program?***
- A.** The student must be a resident of the State and either have graduated from a high school in the State as valedictorian, have a cumulative grade point average of 4.0, or have received a college admission test score that places the student among the top ten percentile. Students selected must enroll within 18 months of graduation from high school, and make satisfactory progress toward their degree with a cumulative grade point average of at least 3.0.
- Q. *How much is scholarship assistance under this program worth?***
- A.** The scholarship is intended to pay for educational costs such as tuition, fees, books, housing, and other educational costs. The number of scholarships awarded and the amount of each scholarship will be determined by the University subject to the availability of funds.

- Q. *What does the Workforce Development Scholarship Program allow the University of Hawaii to do?***
- A.** It allows the University of Hawaii to address projected shortfalls in, and needs of, the workforce by providing financial assistance to any qualified student enrolled at a Community College campus of the University. The scholarship may be renewed annually for up to three years, provided that the student maintains satisfactory academic progress.
- Q. *What are the requirements to receive scholarship assistance under this program?***
- A.** The student must qualify for Hawaii resident tuition, have either earned a high school diploma or have passed the general educational development test, and be eligible for need-based aid according to federal financial aid guidelines.
- Q. *How much is scholarship assistance under this program worth?***
- A.** Just as with the State Scholars Program, assistance under the Workforce Development Program is intended to pay for educational costs such as tuition, fees, books, housing, and other educational costs. Similarly, the number of scholarships awarded and the amount of each scholarship will be determined by the University subject to the availability of funds.
- Q. *How much money is available for scholarship assistance under both programs?***
- A.** During the 2005 legislative session, recognizing the need to provide financial support to Hawaii's residents in attaining a post secondary degree, the Legislature appropriated \$1,500,000 to provide merit-based scholarships for Hawaii's low-income public school graduates wishing to attend the University of Hawaii. Despite this appropriation, the increases in tuition and fees that take effect in the fall of 2006 will continue to make it difficult for Hawaii's residents to attend the University. Since the initial appropriation of \$1,500,000 is not sufficient to provide assistance to the estimated number of eligible applicants, the Legislature will now require the University to transfer an additional \$500,000 into the student scholarship and assistance special fund from the tuition and fees special fund to support the Workforce Development Scholarship Program.
- Q. *Does the Legislature require the University of Hawaii to report on the status of these programs?***
- A.** Yes. The University is already required to report annually to the Legislature, at least 20 days before each legislative session, an itemized account of the sources of revenue into, and expenditures made from, each of its special and revolving funds, including in particular the tuition and fees special fund and the student scholarship and assistance special fund. The report on the latter fund shall specifically include but not be limited to the number of tuition waivers, scholarships, and stipends.

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## LEGISLATIVE ACTION BRIEF

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### WOMEN'S HEALTH

**Q. *The interest in women's health is exploding, partly related to the fact that women's health accounts for more than 40% of health care costs, and the fact that more than 80% of health care decisions are made by women. What did the Legislature do this Session to direct and influence women's health policy and promote positive health practices among women in Hawaii?***

**A.** The Legislature showed its support of important women's issues by passing several measures addressing the unique health care needs of women. **HB1242, HD1 (Act 35)**, which was signed into law by the Governor on April 26, 2006, updates Hawaii's abortion statute. **HB2057, HD2 (Act 12)**, which was signed into law by the Governor on April 21, 2006, allows the release of the placenta to the mother after childbirth. The Legislature also passed **SCR1** which recognizes January as Cervical Cancer Month and **SCR116** which supports the national campaign for menopause and hormone therapy awareness and designates September as National Menopause Awareness month.

**Q. *Why did Hawaii's abortion statute need to be updated?***

**A.** Hawaii has always been in the forefront on health care and related issues. In 1970, three years before the landmark U.S. Supreme Court decision in *Roe v. Wade*, Hawaii enacted Section 453-16, Hawaii Revised Statutes, relating to intentional termination of pregnancy. Thirty-six years have passed and many changes in state and federal law have occurred. The Hawaii statute had not been amended since it was originally enacted, and parts of the law became unconstitutional as written due to changes at the federal level. Therefore, Section 453-16, Hawaii Revised Statutes, needed to be revised to bring it into conformance with current state and federal law.

**Q. *Which provisions of the law needed to be updated?***

**A.** The original statute included a residency requirement, requiring that a woman be domiciled in the state of Hawaii or present in the State for 90 days prior to having an abortion and that abortions must be performed in a hospital. Both of these provisions have been eliminated by the new law. In 1973, the U.S. Supreme Court held that a state law requiring residency for individuals seeking medical care within that state's borders was unconstitutional because it was not based on any policy of preserving state-supported facilities for residents. In the same 1973 case, the Court found that there was a multitude of data showing that other facilities besides hospitals, such as clinics, were more than adequate to perform abortions safely. This measure thus clarifies that clinics and physicians' offices are safe, acceptable places for abortions to be performed. The law, as it is now, conforms with federal law as it no longer has a residency or hospital requirement.

**Q. Does Hawaii's newly amended law expand abortion rights of women?**

**A.** No. The newly enacted law simply clarifies existing Hawaii law and states that the State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female.

**Q. Will removing the residency requirement bring about a new type of "abortion tourism" to Hawaii?**

**A.** Abortions can legally be performed in all states because it is unconstitutional to prohibit a woman from seeking a pre-viability abortion; hence, there would be no need for an individual to incur the huge expense of flying to Hawaii to obtain an abortion. In 1992, the U.S. Supreme Court deciding *Planned Parenthood of Southeastern Pennsylvania v. Casey* reaffirmed the "core" holdings of *Roe* that women have a right to abortion before fetal viability, but allows states to restrict abortion access so long as these restrictions do not impose an "undue burden" on women seeking abortions. Hawaii's residency requirement has been unenforceable for over a decade, with no noticeable increase in abortions performed on non-residents. There is no reason to think that removing this unenforceable language will change that.

**Q. Why was it necessary for the Legislature to pass HB2057 relating to release of placenta?**

**A.** **HB2057 (Act 12)** is an extremely important measure that preserves cultural and religious practices associated with childbirth. Before this measure was passed, a woman, after giving birth to a child, was not allowed to take the placenta from the hospital due to public health concerns. This was extremely upsetting to the families that believe in the cultural practice of burying the placenta as part of protecting the child and ensuring his or her future health. This law was enacted to recognize these cultural and religious practices associated with childbirth, with due consideration for public health, by allowing the placenta to be released by a hospital upon negative findings of infection or hazard, to the woman from which it originated.

**Q. What is the purpose of recognizing January as Cervical Cancer Month in Hawaii?**

**A.** Cervical cancer is the third most common cancer among women in the United States and is highly preventable with regular PAP and HPV testing. By recognizing January as Cervical Cancer Month in Hawaii, the Legislature is endorsing efforts to eliminate cervical cancer by educating women about the importance of appropriate screening and encouraging the research and development of vaccines to prevent cervical cancer.

**Q. Why is it important for the Legislature to support the campaign for Menopause Awareness?**

**A.** **SCR116** was passed by the Legislature to support the federal Food and Drug Administration's national campaign to raise awareness and inform women about menopausal hormone therapy and designating September as menopause awareness month. Menopause is a normal stage in a woman's life that typically occurs in the late forties to early fifties. Women often experience severe symptoms that are associated with menopause and that can be disruptive to daily living. Recent conflicting studies surrounding menopausal hormone replacement therapy have lead to confusion about the risks and benefits of this therapy. The Legislature finds that it is important to

educate women about menopausal hormone therapy choices to help women make the best decisions for their health.



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## LEGISLATIVE ACTION BRIEF

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### WORKER'S COMPENSATION

**Q. *Is it true that an employer can stop paying for medical treatment of an injured worker under workers' compensation law?***

**A.** Under the current workers' compensation law, an injured employee who is receiving medical treatment under a prescribed treatment plan may be denied coverage for medical treatment by an employer. Although medical treatment may be denied prematurely and improperly, a determination of the propriety of the discontinuation of treatment is only made after the injured employee disputes the discontinuation and obtains a hearing with the Department of Labor and Industrial Relations. In the meantime, the injured employee does not benefit from medical treatment, which can result in the deterioration of the injured employee's condition and prolong recovery. Under **HB1867, HD1, SD2, CD1**, an employer is prohibited from prematurely discontinuing an injured employee's benefits until the Director of Labor and Industrial Relations makes a decision as to whether treatment should be stopped.

**Q. *What happens if the Director decides in favor of the employer? Does the injured employee have to pay for the cost of medical treatment already provided?***

**A.** The workers' compensation system was intended to strike a balance between the interests of employers and employees by ensuring that employees who are injured on the job receive medical treatment and recovery of lost wages while giving up their rights to sue. The Legislature passed **HB1867, HD1, SD2, CD1** to protect an injured employee from being denied medical treatment until the Director makes a clear determination on the issue. In keeping with this intent, the Legislature continues to protect the rights of the injured employees who probably can't afford the payment of treatment while injured and not working. The measure ensures that the injured employee is not responsible for the payment of medical services received after the date on which the Director finds that services should have been discontinued. However, an employer or the employer's insurer may be able to recover the costs of treatment through the injured employee's personal health care insurer or some other third party insurer.

**Q. *Did the Legislature do anything else this session to protect the rights of injured workers?***

**A.** Currently, an employer who believes that an injured employee is able to return to work, although the employee has not yet returned to work, can terminate the injured employee's temporary total disability benefits. The injured employee must then file a request with the Department of Labor and Industrial Relations to contest and obtain a hearing on the issue of the termination of benefits. This process can be lengthy and cause great financial and psychological harm to the injured employee, who generally has no other sources of income. Seeking to protect an injured worker from unnecessarily and unjustly being denied benefits, the Legislature passed **SB3035, SD1, HD1, CD1** to ensure that an employer doesn't arbitrarily terminate an injured worker's temporary total disability benefits. Under the measure, an injured worker will continue to receive temporary total disability benefits until such time as the Director of Labor and Industrial Relations makes a determination that the benefits should be terminated.

**Q.     *Did the Legislature make any other improvements to workers' compensation law?***

**A.**     In efforts to streamline and improve the process for health care providers in reporting on and billing for injuries compensable under workers' compensation law, the Legislature passed **SB3090, SD2, HD1, CD1**, which calls for the development of standardized forms by the Department of Labor and Industrial Relations, with input from health care providers, employers, and employees. This measure demonstrates the Legislature's desire to minimize the need for health care providers to fill out multiple forms in providing information to the Department, employers, and the employers' insurers regarding the same workers' compensation claim.